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Supreme Court of the United States

OCTOBER TERM, 1958

No. 853

UNITED MINE WORKERS OF AMERICA,
Petitioner,

v.

MEADOW CREEK COAL COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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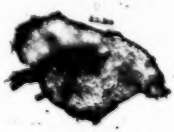

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MEADOW CREEK COAL COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, United Mine Workers of America (herein called "UMW") prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit[1] entered on January 21, 1959, in Case No. 13,470, styled *United Mine Workers of America, Appellant,* v. *Meadow Creek Coal Company, Inc., Appellee,*[2] wherein said Court affirmed the judgment of the United States District Court for the Middle District of Tennessee[3] entered November 5, 1957, ordering that Meadow Creek recover of petitioner the sum of Four Hundred Thousand Dollars ($400,000.00), with

[1] The United States Court of Appeals for the Sixth Circuit will be referred to herein either as the "Court of Appeals" or "Sixth Circuit."

[2] Meadow Creek Coal Company, Inc. will be referred to herein as "Meadow Creek" or "Company."

[3] United States District Court for the Middle District of Tennessee will be referred to herein as the "district court" or the "trial court."

costs, consisting of compensatory damages of Three Hundred Thousand Dollars ($300,000.00) and punitive damages of One Hundred Thousand Dollars ($100,000.00) (R. 44-5),[4] as well as the judgment and order of said Sixth Circuit entered February 23, 1959, denying to petitioner a timely filed petition for rehearing in said case (A. 32).[5]

A certified appendix record in said case, together with the proceedings in the Sixth Circuit, is furnished herewith in accordance with this Court's rules.

OPINION BELOW

The Sixth Circuit's opinion appears in the Appendix hereto at page 14 *et seq.*; in the certified record and it is reported in 263 F. 2d 52 (Adv. Op. March 23, 1959).

JURISDICTION

The Sixth Circuit's judgment affirming the trial court's judgment, as aforesaid, was entered January 21, 1959 (A. 32), while the Sixth Circuit's judgment and order denying petitioner's petition to rehear was entered February 23, 1959 (A. 32). This Court's jurisdiction is invoked under 28 U.S.C., Sections 1254(1) and 2101(c).

BASIS FOR FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT

The basis of jurisdiction in the District Court, as the complaint alleged, was "under Title 29 USCA, 187 (the Labor-Management Relations Act),[6] and also invoked under Title 28, USCA, Sections 1331, 1332, and 1337" (R. 7).

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[4] The abbreviation "R." refers to the printed, certified record of the Sixth Circuit filed in the Supreme Court of the United States. References to page numbers therein will omit the letter "a".

[5] Abbreviation "A." refers to the Appendix to this Petition. References to page numbers therein will omit the letter "a".

[6] The Labor Management Relations Act, 1947, will herein be referred to as the "Act" or "Taft-Hartley".

QUESTIONS PRESENTED

1. In an action by an employer against a labor union for damages allegedly sustained by reason of an organizational strike of six months' duration which occurred in Tennessee, wherein jurisdiction of the federal district court was based upon Section 303 of the Labor-Management Relations Act, 1947 (29 U.S.C. 187), and wherein the company contended that certain actions which occurred during the strike constituted violations of said Section 303 on the part of the labor union and that the entire strike and course of conduct of the labor union relative thereto constituted an unlawful interference with the company's business under the common law of Tennessee, did the district court, having in effect held that there was no violation of the federal Act, have jurisdiction to determine the common law or non-federal cause of action?

2. In an action brought in the United States District Court by an employer against a labor union for damages alleged to have been sustained by reason of a labor dispute in which the labor union had an interest, wherein jurisdiction is predicated upon Section 303 of the Labor-Management Relations Act, 1947, and liability was claimed by reason of alleged violation of such federal statute and the common law of Tennessee, may the labor union be held liable under the common law or non-federal cause of action in the absence of clear proof of actual participation in, or actual authorization of, the acts complained of, or of ratification of such acts after actual knowledge thereof on the part of the labor union as provided for in Section 6 of the Norris LaGuardia Act (29 U.S.C. 106)?

3. Under applicable law, is there sufficient evidence to support the district court's award of compensatory

damages in the amount of $300,000.00, and the Sixth Circuit's approval thereof?

4. Under applicable law, is the evidence sufficient to justify the district court's award of punitive damages of $100,000.00, and the Sixth Circuit's approval thereof?

5. Under applicable law, is there sufficient evidence in the record to support the findings of the district court, and the Sixth Circuit's approval thereof, that the defendant labor union undertook to accomplish its objective by improper and unlawful means consisting of harassment, violence and threats of violence against the plaintiff, its employees and customers, and other persons doing business with it, and that the conduct of the union constituted an unlawful interference with the plaintiff's business in violation of the plaintiff's rights under the common law of the State of Tennessee?

6. Under applicable law, is there sufficient evidence in the record to support the district court's findings, and the Sixth Circuit's approval thereof, that

(a) defendant is responsible and liable for the dynamiting of the railroad switch of the Tennessee Central Railroad Company on June 23, 1948, and

(b) defendant labor union was responsible and liable for the acts of one of its members, Willard Clemons?

7. Where it appears that strike benefits in the form of groceries and merchandise were furnished to members of the defendant labor union who were unemployed because of an organizational strike, may liability for losses sustained by the company as a consequence of such strike be predicated, in whole or in part, thereon?

8. In an action by an employer against a labor union for damages alleged to have been sustained by reason of an organizational strike, it being contended that incidents which occurred during such strike constituted violations of Section 303 of the Labor-Management Relations Act, 1947, and that such strike and the occurrences incident thereto constituted an unlawful interference on the part of the union with the business of the employer under the common law of Tennessee, which action was commenced more than three years after the accrual thereof, is the Tennessee three-year statute of limitations (Section 28-305, Tennessee Code Annotated) applicable to the non-federal cause of action?

STATUTES INVOLVED

The pertinent statutory provisions involved are Section 303, subsections (a)(1), (a)(2), (a)(3) and (a)(4), and subsection (b), and Section 301(e), of the Labor-Management Relations Act, 1947 [29 U.S.C., Section 187, subsections (a)(1), (a)(2), (a)(3) and (a)(4), and subsection (b) and 185(e)]; Sections 4(c), 6, and 13(a) and (b) of the Norris-LaGuardia Act [29 U.S.C., 104(c), 106, 113(a) and (b), 47 Stat. 70, 71, 73]; Section 20 of the Clayton Act (29 U.S.C., Section 52, 38 Stat. 738); and Tennessee Code Annotated, Section 28-305 and Section 28-310. These statutory provisions are set forth in Appendix IV hereto.

STATEMENT OF THE CASE

1. Kind of Action, Pleadings, and the Judgment.

Charging UMW with violating the Act's Section 303, as well as "unlawful conspiracy . . . to maliciously, wantonly and willfully interfere with" contracts between Meadow Creek and its employees, customers and others,

in connection with efforts of District 19, UMW,[7] to organize Meadow Creek's employees in 1947 and 1948, that Company, on February 12, 1954, instituted action to recover from UMW compensatory damages of $750,000.00 and punitive damages of $500,000.00.

By its original complaint and amendments thereto,[8] Meadow Creek, a coal mining operation near Monterey, Tennessee,[9] complained that UMW, through its representatives, brought a group of men to Meadow Creek's mine on January 12, 1948;[10] that this group would not allow the employees to leave the premises and threatened them; that UMW representatives and members "exhorted them to join" UMW and "not to return to work until a union was organized" at the mine and a contract signed by Meadow Creek designating UMW as collective bargaining representative of the Company's 169 employees, all at a time when UMW had not been certified as such employees' representative under the Act's Section 9 and no contractual relationship between Meadow Creek and UMW existed; and that as a result thereof Meadow Creek's mine was closed and remained closed until April 17, and UMW "by its unlawful actions, completely destroyed this mining business and plaintiff was never able to re-establish this business" (R. 7-9, 25).

The complaint charges also that to force Meadow Creek to recognize and bargain with UMW, employees were intimidated and bribed by UMW to keep them from

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[7] Herein called "District" or "District 19."

[8] The original complaint is found at page 7 of the printed record; while amendments thereto are found at pages 12, 22, 24-26. Unless otherwise indicated, use of the word "complaint" includes the amendments thereto.

[9] The complaint alleged (R. 7), and answer thereto admitted (R. 18) that Meadow Creek's business affected commerce within the meaning of the Act's Section 303.

[10] Unless otherwise indicated, all dates refer to the calendar year 1948.

returning to work and "to attempt to get them to join" UMW, in violation of the federal statutory law (R. 9).

In addition, Meadow Creek charged that UMW had violated the Act by secondary boycott activities in that before and after January 12, UMW, its representatives, agents and servants

> (1) induced or encouraged Tennessee Central Railroad Company's employees "to engage in a concerted refusal to transport or otherwise handle" Meadow Creek's goods, and
>
> (2) intimidated Meadow Creek's customers' truck drivers and created widespread fear and tension throughout the coal fields, causing the truck drivers and others "to engage in a concerted refusal to transport or otherwise handle" Meadow Creek's goods,

the object thereof being to force or require the Railroad Company and the truck drivers' employers and others to cease handling and transporting Meadow Creek's products and to cease doing business with it (R. 24-25).

Meadow Creek claimed damages, both compensatory and punitive, "by reason of the violation of these statutes" and for "unlawful conspiracy . . . to maliciously, wantonly and wilfully interfere with the contracts of employment" between Meadow Creek and its employees, customers and others (R. 10-11).[11]

Two written UMW motions to dismiss (R. 13, 23) and an oral motion, at the conclusion of Meadow Creek's evidence in chief (R. 575), were denied (R. 17, 27).

[11] The claim for damages based upon alleged violation of the Act is found in the original complaint's paragraph 16 (R. 10-11), while the claim for damages for unlawful conspiracy is found in the original complaint's paragraph 17 (R. 11).

UMW's answer (R. 17), as amended (R. 28, 30), admitted that Meadow Creek's employees were persuaded to and did engage in a strike, but denied the material allegations of the complaint including those which charged UMW with the commission of unlawful conduct, and denied liability to Meadow Creek or that Meadow Creek had sustained any damages as a result of any activities of UMW (R. 17-21).

The district court tried the action in lieu of a jury, and by its Findings of Fact and Conclusions of Law,[12] held UMW liable and, on November 5, 1957, entered judgment against UMW in Meadow Creek's favor for $300,000.00 of compensatory damages and $100,000.00 of punitive damages (A. 13). Upon timely appeal (R. 46), the Sixth Circuit affirmed (A. 32).

2. The Issues and How They Were Decided.

a. The issue of jurisdiction of the action.

UMW contended (R. 575) the district court was without jurisdiction of the action because (1) lack of proof that the Act had been violated and (2) the complaint asserted two separate causes of action: one, an alleged violation of common law rights and, two, a violation of the Act; and since the action had failed "as far as Taft-Hartley is concerned, it leaves alone the one based on its state right of action with which this Court is not vested with jurisdiction", there being no diversity of citizenship (R. 575).

Disagreeing, the district court, following the introduction of all the evidence, concluded (R. 42) that on "the basis of the pleadings and the entire evidence," Meadow Creek's claim of secondary boycott under the Act's Sec-

[12] R. 31-44; A. 1-12.

tion 303, "raises or presents a substantial federal question, and consequently the Court has jurisdiction to adjudicate such claim"; that the "material and operative facts supporting the plaintiff's federal claim of secondary boycott are substantially the same as the facts supporting its non-federal or state claim of an unlawful conspiracy to injure its business"; that the "claim of secondary boycott and unlawful conspiracy are not separate causes of action but are merely different grounds to support a single cause of action, the cause of action being the violation by the defendant of the plaintiff's right to be free from wrongful interference with its business, and that by reason thereof the Court has jurisdiction of the non-federal claim of unlawful conspiracy to injure the plaintiff's business, under the doctrine of *Hurn* v. *Oursler*, 289 U. S. 238 . . ."[13]

The Sixth Circuit was accordant with the district court's conclusion, finding and declaring that upon the facts found by the district court "we think that this case presents only a single cause of action; that the claim of secondary boycott and unlawful conspiracy are not separate causes of action, but merely different grounds to support a single cause of action", declaring *Hurn* determinative of the issue (A. 23).

b. The issue of standard of responsibility.

In its Conclusions of Law, the district court declared UMW responsible "for the acts and conduct of its agents, servants and representatives, in accordance with the general rules governing the relationship of master and servant or principal and agent" and that UMW "is clearly shown to have been directly responsible for the conduct which brought about the wrongful closing" of Meadow

[13] Other citations included were *American Fidelity and Casualty Co.* v. *Owensboro Milling Co.*, 6 Cir., 222 F. 2d 109; *Wertanen* v. *Welduction Corp.*, Dist. Court, Eastern Dist. of Michigan, 151 F. Supp. 440.

Creek's mine "and wrongful interference with its business to such extent as to make" UMW legally liable therefor (R. 43). UMW contended that liability of the alleged common law cause of action had to be determined in accordance with the rule of Section 6 of the Norris-LaGuardia Act (29 U.S.C 106) and not under the definition of agency set forth in the Act. Citation of *UMWA* v. *Patton*, 4 Cir., 211 F. 2d 742 by the district court made it clear that it relied on the rule of the Taft-Hartley Act.

The Sixth Circuit, rejecting UMW's contention, answered that (A. 30)

> "the facts as found by the trial judge, based on substantial evidence, are that the operations of Ridings, international board member of appellant, and several of its other international representatives, were definitely either authorized by"

UMW,

> "or ratified by it after obtaining actual knowledge of the unlawful acts perpetrated",

and that UMW's purpose

> "in organizing and directing the march on appellee's mine was, by force and violence, to close its operation until appellee should sign a labor contract with"

UMW, and that

> "Indeed, Ridings, who was general director of the activities of the mob of marchers and the other union members who participated in the unlawful acts, was high enough in the hierarchy of the United Mine Workers of America to render that organization liable for the consequences of conduct of its members under his general leadership." (A. 30).

c. The issue of compensatory damages.

UMW contended that there was total absence of proof warranting an award of compensatory damages, that

there was no evidence of loss of profits, that the compensatory damage award of $300,000.00 was necessarily speculative and that, even if compensatory damages were warranted (which UMW denied), the award of $300,000.00 was excessive. Predicated upon "the whole record and in the light of the entire evidence", the district court found that UMW's unlawful conduct in closing Meadow Creek's mine "by force of a large mob, by threats, by acts of violence and other wrongful means, *directly caused" the company "to suffer damages to its business for the year 1948, principally for the first half of that year"*, and that based upon the company's business and profits for 1947, prospects for increased business and lower costs in 1948, its contracts, prevailing general conditions in the industry "and the entire record", a fair amount to compensate Meadow Creek for its losses is $300,000.00 (R. 41-42, A. 10). The Sixth Circuit was of the opinion that "there was adequate substantial evidence to support the award of $300,000.00 compensatory damages for the wrongs and injuries inflicted" upon Meadow Creek's business by UMW (A. 31) which the trial court included in its conclusions (A. 12).

d. The issue of punitive damages.

The district court found that UMW, "in closing the plaintiff's mine and in keeping it closed, by force, by threats of bodily harm, and by acts of violence, and in conspiring with its members to accomplish the same purpose, acted wilfully and wantonly and with the intent to damage the plaintiff's business" (R. 40, A. 9), and concluded that by reason of such wilful and malicious conduct Meadow Creek was entitled to recover punitive damages of $100,000.00, which it included in its judgment (R. 45, A. 12, 13). Rejecting UMW's contention that the district court was not justified in awarding

such damages, growing out of a labor dispute in an action commenced more than six years after its occurrence, and that in any event the district court erred in awarding punitive damages in the enormous sum of $100,000.00, the Sixth Circuit was of opinion that it was within the district judge's sound discretion to award that amount as punitive damages (A. 31).

e. The issue of liability.

In addition to imputing to UMW responsibility for the dynamiting and the conduct of Willard W. Clemons (*post*, pp. 29-32) and finding that in furnishing groceries and supplies to striking members UMW kept the employees from returning to work (*post*, p. 15), the district court found defendant, pursuant to a conspiracy to close down Meadow Creek's mine by force (A. 2-3), blockaded Meadow Creek's private road; would not allow customers to enter the property; that some of the group were armed and intercepted employees, and by persuasion and threats of bodily harm to them and their families sought to get them to join UMW (A. 3); that union representatives made speeches in which they told those assembled that Meadow Creek's mine would not run another day unless it signed a UMW contract (A. 3); that because of the mob's action in trespassing Meadow Creek's property and threatening its employees and officers, Meadow Creek was unable to resume mining (A. 3-4); that UMW's purpose "in organizing and directing the march" on Meadow Creek's mine "was to close its operation by force and to keep it closed until" Meadow Creek signed a UMW contract (A. 4); that trucks were prevented from entering Meadow Creek's property on January 12 and told by UMW members not to come back until a contract was signed; that drivers and owners of trucks doing business with Meadow Creek were placed in fear of harm and

would not return for coal until a contract was signed with UMW in July, 1948 (A. 6); and that in closing the mine and keeping it closed by force, by threats of bodily harm and violence, and in conspiring with its members to accomplish the same purpose, UMW "acted wilfully and wantonly and with the intent to damage" Meadow Creek's business (A. 9).

The district court concluded that the "acts and conduct" of UMW "as set forth in the Findings of Fact"[14] above constitute an unlawful interference with the plaintiff's business, in violation of the plaintiff's rights under the common law obtaining in Tennessee, thereby entitling the plaintiff to recover damages proximately resulting therefrom" and that the "means employed" by UMW "to accomplish its purpose were improper and unlawful, consisting of harassment, violence and threats of violence" against Meadow Creek, its employees, customers, and other persons doing business with it, the effect of which "was to drastically interfere with and curtail production of coal" at Meadow Creek's mine during 1948 (A. 11). Contrary to UMW's contention of legality of object in inducing the employees to strike, as well as the propriety of the means used, the Sixth Circuit concluded that the district court's separate Findings of Fact were "all supported by substantial evidence and not clearly erroneous" and that

> "In view of the substantially supported findings of fact of the district court, . . . it would seem unnecessary to labor the point that there appears adequately sufficient evidence in the record to support the findings of the court that appellant set out by violence and threats of violence against appellee, its employees and customers, to accomplish its objective of 'organizing' appellee's mine",

[14] The district court's Findings of Fact consist of 41 findings (A. 1-10).

and that

> "Such conduct constituted an unlawful interference with appellee's business, in violation of the common law of Tennessee." (A. 29).

The Sixth Circuit declared that it

> "has no right to set aside findings of fact, either of the jury in an action by the employer against a labor union for damages caused by secondary boycott, or of a trial examiner in a National Labor Relations Board proceeding to enforce its cease and desist order against the employer, though such findings are inconsistent, if they are supported by substantial evidence on the record considered as a whole in each proceeding" (A. 31).[13]

f. The issue of imputing to UMW responsibility for alleged conduct of UMW members.

(1) Finding that a portion of the Tennessee Central Railroad Company's railroad track was destroyed by a dynamite explosion, occasioning the arrest of two UMW members, who were visited by union representatives while they were in jail, that the representatives carried to them cigarettes and things to eat, and that UMW's Ridings (after the strike ended) requested that prosecution of the union members be dropped, and although there was no prosecution, the district court declared that "From all of the circumstances . . . it is a reasonable conclusion that" UMW is responsible for such dynamiting, and concluded the incident to be one of the acts and conduct constituting the unlawful interference with Meadow Creek's business and entitled it to recover damages from UMW (R. 43, A. 7).

UMW asserted that there was neither union agency

[13] The Sixth Circuit referred to its previous holding in *United Brick and Clay Workers* v. *Deena Artware*, 6 Cir., 198 F. 2d 637, 642.

nor union ratification of the dynamiting, even if the union members had been found guilty thereof. The Sixth Circuit, disagreeing, referred to the dynamiting incident as "Another consequential incident . . . related by the district court in its findings" (A. 19).

(2) Although Willard W. Clemons was not an UMW employee or official and acted under no orders from any UMW official, and testified thereto as a Meadow Creek witness, the district court nevertheless attributed to UMW his conduct in stopping three Tennessee Coal employees, while armed, and berating them, because of the payment by the District of $5,000.00 to Clemons about two years following the strike's termination for injuries received by Clemons when he was wounded by a brother of one of the three men stopped on their way to work at the Meadow Creek mine. UMW contended that it was not responsible for Clemons' unauthorized act and that payment of the money for the injuries did not constitute a ratification of such unauthorized conduct. The district court concluded that the Clemons incident was one of the acts and conduct constituting unlawful interference entitling Meadow Creek to recover damages; and the Sixth Circuit appraised the incident as "relevant" (R. 39, 40,[16] A. 20).

g. The issue of UMW's liability based upon strike benefits furnished to union members unemployed because of the strike.

The district court found that between January 12 and July 13, when the UMW contract was executed, defendant paid for groceries and other merchandise supplied by merchants to Meadow Creek's employees who had refused to return to the mine for work, in an amount in excess of $70,000.00. The district court found that this

[16] Findings 31 and 34 (A. 7, 8-9).

money was paid by UMW to keep the employees from returning to work for plaintiff, and employed such findings as part of the acts and conduct constituting the unlawful interference by UMW with Meadow Creek's business (R. 39, 40, 43).[11] Although UMW asserted that the district court's holding was not supported by the common law of Tennessee and was repugnant to the Clayton Act's Section 20 (29 U.S.C. 52) and Norris-LaGuardia's Section 4(c) [29 U.S.C. 104(c)], the Sixth Circuit noted merely the facts relating to the issue, and while it made no comment thereon, it approved the district court's various findings (A. 24-5).

h. The issue of statute of limitations.

In its answer, UMW asserted (R. 30), that Meadow Creek's alleged cause of action was barred by Tennessee's three-year statute of limitations (Tennessee Code Annotated, Section 28-305). The district court (R. 43) held that the ten-year statute of limitations of Tennessee and not the three-year statute applied to the present case and the action was not barred; and the Sixth Circuit agreed (A. 29).

3. The Facts

a. The issue of liability.

In October, 1946, District 19, UMW, engaged in organizing nonunion coal mines in Putnam County, Tennessee, and counties adjacent thereto (R. 184, 580-1). District's President Abe Vales placed in charge of the organizing campaign J. W. Ridings (R. 185), a member of UMW's Executive Board (R. 181, 579). Associated with Ridings in this original activity were Hugh Brown and Harvey

[11] Findings 32 and 33, and Conclusion of Law 5 (A. 8, 11).

Bell,[18] both UMW representatives, and Ernest Stultz, District representative (R. 181-2).[19] All work assignments were made by District's president (R. 182).

Meadow Creek's mining operations, interstate in character (R. 49), were located in Putnam County, Tennessee; and in August, 1947, a local union charter was granted by UMW for the Meadow Creek employees as Local 8990 (R. 581). Meadow Creek employees numbered 169 (R. 55); and prior to January 12 approximately 100 of such employees had signed and delivered UMW membership application cards (R. 553-559).[20] On January 9, Ridings and Brown, at a meeting with Meadow Creek's owner, William T. Ray, advised Ray that a "substantial majority" of the employees had "signed up" with UMW (R. 57, 582). According to Ridings, he and Brown told Ray "we were anxious to get a contract for" Meadow Creek's employees (R. 268, 582), to which Ray responded he was not interested at that time (R. 582). While Ray's version is that nothing was stated about "the signing of a contract" (R. 57), he admitted he knew that some of the employees had joined UMW (R. 127), as well as his retort to the claim of "a substantial majority" that if his men desired UMW affiliation he "would be glad to talk to them" and that his "door was open to any man any time" (R. 57), and to "let them come in and ask for [an UMW

[18] Both Vales and Brown were dead at the time of the trial herein (R. 181).

[19] Despite the undisputed evidence that Stultz was a District representative, the trial court found him to be "an International Representative of District 19" (R. 32-33), and the Sixth Circuit, contrary to established fact, recites in its opinion that UMW had sent him in to Tennessee to organize (A. 15).

[20] L. H. Bell, a Meadow Creek witness, on cross examination testified that "upwards of around a hundred" of the 169 employees had accepted UMW membership (R. 553) prior to January 12 (R. 556); yet the Sixth Circuit, without testimonial support, stated that the union organizers "failed to interest a majority" of the employees (A. 15). See the trial court's finding 6 to the same effect (R. 33).

contract] and I would answer them immediately and promptly" (R. 128), though agreeing that he did not tell Ridings and Brown or suggest to them he was agreeable "to have an election by card count or any other manner" (R. 128).[21]

For some time prior to January, 1948, wages paid by Meadow Creek to its employees were considerably less than those called for under UMW collective bargaining agreements.[22] More than a majority of Meadow Creek's employees lived "in some two or three places", and it was decided to hold a meeting at the mine, which was typical of meetings held in the organizing campaigns (R. 640), to afford UMW membership an opportunity to talk to those of the Meadow Creek employees who had not joined UMW (R. 640) and to encourage Meadow Creek employees to refuse to work without a union contract (R. 640-1).

The January 12 meeting

On January 12 a group of UMW members working at mining operations other than Meadow Creek met in Sparta, Tennessee, where employees of a shirt factory were engaged in a strike to gain recognition for District 50, UMW. This group, estimated variantly from 100 to 300 persons,[23] which included Ridings and Brown, after

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[21] This recalcitrant employer attitude, not disputed, is not mentioned in either the trial court's findings and conclusions (R. 31-44) or the Sixth Circuit's opinion (A. 14) and obviously neither court gave it any consideration.

[22] Meadow Creek's scale was a daily rate of $11.00 or less (R. 798), as compared with $13.05 paid under UMW agreements. On a tonnage basis Meadow Creek paid 70¢ for coal actually loaded, 10¢ for cutting, and 5¢ for shooting and drilling, while under UMW contracts the tonnage rate was 78¢ per ton, plus one-ninth thereof, plus $3.05 per day. UMW contracts also provided vacation pay and for the payment of 10¢ per ton by coal operators to the Trustees of the UMWA Welfare and Retirement Fund (R. 123, 891, 993-1003 [P. Ex. 19]).

[23] R. 118, 187, 198, 306, 371, 402, 478, 725, 807-8, 816.

remaining in Sparta for about three hours, drove through Monterey to the Meadow Creek mine, arriving there shortly after 2:00 p.m.[24] The group parked their cars, estimated at 60 or more.[25] While Meadow Creek witnesses contended that the road was blocked (R. 115, 401), and one such witness attributed to an unidentified "stranger" the statement that "he had orders to keep the road blocked" (R. 402),[26] two admitted that when each asked that a car be moved to "let me out", his request was honored (R. 117, 403, 422); another admitted he had no trouble in driving up to where the group had gathered and that while "it was a pretty close drive", he was not blocked (R. 342); and a third witness related that he "eased right on through them" without asking anyone to move any cars and without running over anyone (R. 377). Sheriff Higgenbotham, whose presence was at Ridings' invitation to "see there wasn't any disturbance" (R. 820, 823), declared no one complained to him that free access of movement was being interfered with (R. 822). Walter Lewis, an employee, had no trouble driving to the company store (R. 699). Yet, the district court and the Sixth Circuit found (R. 33, A. 29) that UMW had "blocked" plaintiff's road and placed guards at a point between the intersection of the road with the public highway and the mine, and would not let customers enter the property, although only one truck driver testified he was told by an unidentified "stranger" not to enter (R. 195).

On this occasion, as Meadow Creek's day-shift employees came from the mine, speeches were made by Ridings, Brown and Howard Madewell, local union president at the Fentress mine.[26a] Ridings reported that Ray had re-

[24] R. 714-16, 833-4, 726, 737.

[25] R. 114, 120, 338.

[26] Witness Wilson declared that "cars could have gotten by" the car (R. 837).

[26a] Fentress Coal & Coke Co.

fused to sign a contract; invited those who had not joined UMW to do so; told them that UMW members from other mines had come to visit with them; and explained the benefits they would have under a UMW contract (R. 586). Ridings "said everything" to "*encourage* the men to get in the union" (R. 265-6).

On the other hand, while Meadow Creek witnesses, *none of whom were Meadow Creek employees,* charged the speakers with coercive statements, pertinently their statements vary. Morgan, Meadow Creek's officer and director, attributed to the three speakers the statement that "there would not be another lump of coal come up the slope of that mine until the president of this company signed the Union contract" (R. 279); witness Mathews' version was that Ridings said there would be no more coal "coming up there until they organized" (R. 339); and a third witness quoted the speaker as saying that if the men wanted to work "they were going to have to join the Union", that "the mines might be blown up on them" and "their wives and children might be found dead in a hollow" if the men worked; and that "they just weren't going to operate until they joined the Union" (R. 372). Of Meadow Creek's 169 employees, George Stamps, an employee and a deputy sheriff, alone quoted Ridings as saying that " 'If the mine is operated any more,' . . . it would be under a Union, that it wouldn't be another ton of coal run out of there till it was organized" (R. 403).

Other Meadow Creek employees as UMW witnesses, and Sheriff H. E. Higgenbotham, who heard the speeches, heard no threats (R. 801, 822). A minister, Tommy Vaughan, testified that Ridings invited the men who "wanted to" sign a card "to come on around and sign" (R. 809); Walter Whitaker, an employee who on January 12 had not signed and did not on that day sign a UMW

card, heard no threats (R. 866); testifying similarly, Martin Murphy, an employee, stated no threats were made and he himself handed out UMW cards (R. 765); and employee Walter Lewis, who heard no threats, credited one of the speakers with the statement that "he hoped that we wouldn't go back till we got a contract with" UMW (R. 702). Contradictory of Meadow Creek witnesses, Sheriff Higgenbotham heard no inflammatory remarks of any kind (R. 822); Ridings denied that either he or Brown made the statements charged to them (R. 587); and Madewell denied making any threats to the men in his talk or threatening that the miners' families would be in danger if the men returned to work in the mine (R. 739). Meadow Creek's Morgan, on the other hand, admitted the speakers' discussion of union benefits and their *encouraging* the men to sign Union cards (R. 279). Many of the group assembled talked with Meadow Creek employees to interest them in joining UMW. Some of the group had worked previously with Meadow Creek employees (R. 809, 699-702); and one of the group talked with a relative who was a Meadow Creek employee (R. 717-8). *Not a single Meadow Creek employee came to the witness stand to complain that he had been threatened, coerced or in anywise mistreated by any of the group assembled, or that he had refrained from working at the mine following the events of January 12 because of being afraid to do so.* A single incident is detailed by Meadow Creek's witness Stamps, the deputy sheriff who admitted he made no arrests there that day, that he heard one of the group tell Amon Key that "if he wanted his family living, he was going to have to join the Union" (R. 425) but Amon Key was not placed on the stand so to testify or that he was threatened; while Stamps himself asserted in Key's presence, "He [Key] don't have to sign nothing" (R. 404).

While some of Meadow Creek's witnesses present at the scene depicted the situation as having "an attitude of tension" or a "powder keg" (R. 119, 374), other Meadow Creek witnesses testified contrariwise: Morgan, company official and director (R. 274), saw no trouble of any kind but only "people milling around and talking" (R. 307); a police chief's testimony contained no portrayal of trouble; a deputy sheriff admitted that no one was placed under arrest and he had seen no one hit (R. 425); and another Meadow Creek witness, who was paying, and continued to pay, employees their wages, and who continued to weigh coal during the speech-making, refused to picture the situation as "excitement", declaring only "there were a lot of men milling around" (R. 537-8). Not only did Meadow Creek employees' testimony corroborate the version that the gathering was peaceful (R. 779, 801, 702, 865), likewise Sheriff Higgenbotham related that the men "were just walking around there, talking to one another, milling around" (R. 821); and he saw no violations and heard no inflammatory remarks of any kind (R. 822).

Two Meadow Creek witnesses testified that they saw a single unidentified "stranger" with a gun (R. 195, 201), and another Meadow Creek witness admitted that on this occasion he too carried a gun (R. 378-9). Other witnesses declared they saw no gun other than the one which the deputy sheriff, who was also a Meadow Creek employee and was one of the employees who returned to work as a nonunion employee, carried "swinging from his hip" (R. 740, 865, 810, 821, & 0). While there was testimony that there was some liquor among the group assembled (R. 117, 561) and "part of them was drunk" (R. 404), a Meadow Creek employee (R. 866) and others (R. 695, 740, 721, 871) testified to the contrary.

Although there is no testimonial support for the finding by the trial and appeals courts that UMW "determined . . . to close down [Meadow Creek's] mine by force; and, through its representatives in the area and with the aid of many of its members in that region of Tennessee and Kentucky, conspired to go in force upon" Meadow Creek's property (A. 2-3, 16), there is evidence that the matter of the employees' meeting at the Meadow Creek mine was discussed at a local union meeting of employees of the Fentress Coal and Coke Company, at which the local union president told the employees when the meeting was to be, and that he "would be glad to have" the members go along (R. 743), and that Ridings was not at that meeting (R. 732). There is further testimony that those who attended the meeting went as volunteers and, as one witness related, no union officials asked him to go and that he went at the invitation of other employees (R. 812).

Meadow Creek employees refuse to work; and Meadow Creek's President goes to Florida.

On the following day (January 13), only eight to twelve of Meadow Creek's employees reported for work (R. 84) and Meadow Creek determined that it was unable to operate the mine with so small a number of men (R. 130, 479). About January 22, Meadow Creek's president Ray left for Florida on vacation, without making any effort to contact any union representative. The district court found "the Union was furnished with" Ray's Florida address, that no UMW representative "got in touch with him" and that upon his return to Monterey in March, defendant "still made no effort to meet with him or discuss the matter, yet . . . Ridings knew that he was in Monterey" (R. 35), and both the district court and the appeals court alike ignored undisputed evidence that late

in January Ridings and Brown contacted Meadow Creek's Morgan and suggested a meeting be arranged but Morgan advised that he had no authority to negotiate a contract and that Ray was out of town (R. 283-4, 312-13). The courts were unconcerned with admissions by Morgan that he advised Ray of these contacts but received no instructions with reference to such a meeting (R. 315), or that when Ray returned from Florida early in March he made no effort to communicate with union representatives before his second departure for Florida (R. 131-2). When Ray left for Florida he left no instructions to arrange a meeting with UMW. Neither the district court nor the Sixth Circuit concerned itself with the unchallenged evidence that during January, 1948, 122 of Meadow Creek's employees had become UMW members at Local Union 8990, and that throughout February, March, April, May and June, 1948, approximately 130 members of said local union had been Meadow Creek employees on January 12 (See P. Ex. 11, R. 963-984).

Meadow Creek's President returns and Tennessee Coal Company is formed in April to operate the Meadow Creek mine.

In April, Ray returned from Florida and a corporation known as Tennessee Coal Company[27] was organized by two supervisory employees of Meadow Creek and one Vaden Lackey (R. 91, 319). Meadow Creek and Tennessee Coal entered into an agreement whereby the latter would have complete charge of the mine operation and the employment and direction of the work force; all coal mined was to be delivered to Meadow Creek, which was to sell it; Meadow Creek was to reimburse Tennessee Coal for cost of operation, including officials' salaries and, in addition, 10¢ a ton for each ton of coal produced. Ten-

[27] Herein referred to as "Tennessee Coal."

nessee Coal operated the mine during the remainder of the time material herein.

While Ray claimed that organization of Tennessee Coal, through others, was his idea to minimize his losses (R. 88-92), the record establishes that Ray had decided to let the mine "set" (R. 152) and as late as April, 1948, he told supervisory employees that he "was through with coal business" (R. 889).

Tennessee Coal, in April, reopened the Meadow Creek mine on a nonunion basis (R. 704) with approximately 40 employees (R. 1009), of whom only two were UMW members (R. 963-84, P. Ex. 11), the other striking employees refusing to return to work (R. 496, 497). Of the 40 employees, approximately seven had not been Meadow Creek employees on or prior to January 12 (R. 526). The number of employees of Tennessee Coal, prior to July, was insufficient to operate the mine successfully. While the mine operated on a non-union basis, there was no picketing and no interference with operations at the mine (R. 140).

In late May or early June, officials of Tennessee Coal and Meadow Creek met with Ridings, Bell, Brown, District's President Vales and a committee from Local Union 8990 to discuss a collective bargaining agreement (R. 141-3, 481-2, 499). Several meetings for such purpose (R. 597, 782) were unsuccessful because of disagreement over seniority (R. 526-7, 597-8, 781-3).[20]

Alleged Threats to Customers and their Truck Drivers.

One of Meadow Creek's customers (Logan Vernon),

[20] Tennessee Coal's position was that employees should have seniority as of the date of their employment by Tennessee Coal, while the Union's position was that seniority be computed as of the date of employment with Meadow Creek (R. 526-7, 598-9, 781-3).

who admittedly, at the time of the hearing, had owed Ray's bank a substantial sum of money for "a couple of years" (R. 390-1), testified that he had obtained a load of coal at the Meadow Creek mine on January 12 and was at the mine when he observed the group; that "a fellow stepped up on my truck" whom he heard say, "That will be the last time a load of coal will come out of here" (R. 371-2); but this customer admitted that on a subsequent day he returned and obtained more coal (R. 374, 385). On both occasions Vernon admitted that he carried a gun (R. 374-5, 378-9), and that on the second occasion he had both a pistol and a rifle (R. 385).

While several truck owners testified that their respective drivers were unwilling to return to the Meadow Creek mine for coal (R. 192, 256, 361, 395), and another testified that he wouldn't send the trucks in" (R. 468), and another stated that he was afraid "I would get my truck torn up" (R. 356), since, as the evidence showed, the mine did not operate after January 12 until sometime in April, the trial court cogently asked why a truck driver would "go back when the mine was closed?" (R. 397).

A truck owner customer (Holbert) testified Stultz "advised" him "not to sell any more coal until the trouble was cleared up" and his place "would be blown-up" if he sold any more coal, following which he did not send any more trucks (R. 255). Holbert admitted that at the time he had a quantity of coal on his yard and that he sold the coal without any interference (R. 258). Another customer (Jessie Stewart), who was not at the mine on January 12, testified that he did not haul any more coal from the mine until after a contract was signed because he was "under the impression that there might be trouble" (R. 358-9). Other witnesses, not Meadow Creek

customers, related that there was "tension" in Monterey (R. 259-264).

Admitting he did not know all of Meadow Creek's employees (R. 197), plaintiff's witness Galyon testified that on January 12, a stranger, armed with a shotgun, stopped him at a point where the mine road turns off the state highway and told him to turn his truck "around and get out of there", which he did (R. 195), and that he was afraid to go back (R. 196). Another plaintiff's witness (Palmer), also a customer's truck driver, related he saw two strangers, that Galyon had told him "he couldn't get in", that he returned without getting any coal, and he did not return thereafter because he "figured there would be trouble and . . . I didn't want to get hurt" (R. 200-1). Palmer did not hear the "strangers" say anything to Galyon, and admitted he could see the crowd around the store but attributed no wrongdoing to it, saying that they were "standing around" and talking in groups (R. 202-3).

Without testimonial predicate in the record, the district court found (R. 37), and the Sixth Circuit agreed (A. 29), that on January 12 Meadow Creek had over 500 truck customers[29] scattered through Tennessee and Kentucky, of which over 100 were at the mine for coal on that day; that other trucks were blocked and the drivers threatened; and that "the drivers and owners of the 500 or more trucks . . . were placed in such fear of bodily harm that they did not return to the mine for coal until a contract was signed by the management with defendant in July 1948".[30]

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[29] Ray was unable to give the names of 500, saying, "I think with time I could give you 500 names of people that hauled coal from our mines" (R. 175).

[30] See Findings of Fact, Nos. 20-25 (A. 6).

District 19 furnishes groceries and supplies to striking members.

The record establishes that 63 Meadow Creek employees filed claims for unemployment compensation prior to April 6 (R. 1012), about which time the mine resumed operation by Tennessee Coal, and 40 persons were employed by Tennessee Coal (R. 1017); that the claimants testified "that the miners employed are non-union workers and if they were to be employed at the premises of other non-union mines in their community that they would be required to resign from the union, by the employers, before they could be re-employed" (R. 1017); that the unemployment compensation claimants were denied benefits from January 12 until April 6 because their unemployment was "due to a labor dispute which was in active progress at the mines where they were last employed" (R. 1017-18); and that such claimants, since April 6, have been unemployed, able and available for work for reasons "other than that of a labor dispute" (R. 1017).[30a]

Shortly after the strike's inception, when the strikers were denied their unemployment insurance, Ridings and Bell arranged with grocers to provide food and other necessities to UMW members on strike (R. 223, 545, 546, 549, 672). Arrangements were made with stores at which the employees normally traded (R. 227). In some instances assistance was given to strikers who were not normally customers (R. 225), and payment therefor was made by checks issued by District 19 (R. 271, 546). As Bell testified, while it was not their intention at first to pay any bills, after the strike "became lengthy, why, [the

[30a] These statements are based upon defendant's Exhibit 6, offered by defendant, objected to by Meadow Creek. The Court admitted the paper, stating that it would "pass upon its admissibility if it becomes material" (R. 860-1).

men had to be fed, they had to have something to eat; so we fed them" (R. 547, 669-70). These arrangements were effective from February through the first weeks of July, 1948, when a UMW collective bargaining agreement was signed by Tennessee Coal Company, then operating the Meadow Creek mine (R. 672). For such purpose District 19 expended approximately $76,000.00 (R. 671).

The Sixth Circuit approved (A. 29) the district court's finding (R. 39-40) that "The amount of money thus paid by the defendant to and for these employees of plaintiff who refused to work aggregated a large sum, probably well in excess of $70,000.00, and the Court further finds that this money was paid by the defendant for the benefit of such employees of plaintiff to keep them from returning to work for plaintiff."[1]

The railroad dynamiting incident of June 22.

About midnight on June 22, a switch on a spur leading from Tennessee Central Railroad's main line to the Meadow Creek mine was dynamited. Two individuals, members of Local Union 8990, were arrested on circumstantial evidence (R. 941) and charged with this occurrence (R. 409-10), and bound over to the grand jury, which failed to return an indictment against either of them (R. 410-11). These two men were visited in jail by District representative Bell, who "took them some fruit and cigarettes and visited with them" (R. 545).

Following the dynamiting of the switch, railroad employees who normally serviced the Meadow Creek mine protested against further servicing thereof because they

[1] Finding 33. This is one of the "acts and conduct of" UMW which the District Court concluded constituted an unlawful interference with Meadow Creek's business (A. 8).

believed it "endangers our lives without proper protection" (R. 212-14); the railroad company advised that Meadow Creek's attorney had advised that "there is no danger in working" the mine (R. 215, 929) and "there was nothing to fear" (R. 216). No railroad cars were delivered to the Meadow Creek mine until after the UMW contract with Tennessee Coal was executed (R. 100). The railroad's chief of police, upon investigation, found that while some people seemed "disturbed", likewise "some people didn't seem to have any feeling about it" (R. 220-21).

After the strike's end, Ridings requested of Tennessee Coal that prosecution of the two members be dropped. The district court and the Sixth Circuit alike found that a reasonable conclusion was that UMW "is responsible for the dynamiting" (A. 7, 29).

The foregoing dynamiting incident is one[32] of the "acts and conduct of" UMW which the district court found and concluded, and the Sixth Circuit agreed (A. 29) was violative of Meadow Creek's rights under the common law obtaining in Tennessee entitling it to recover damages.

The Willard Clemons incident of July 2.

Testifying as a Meadow Creek witness, Willard Clemons, a UMW member employed at a nearby mine, who had not been present at the Meadow Creek mine on January 12, related he had in early July learned from "general rumor" or from other UMW members that there was to be a meeting and that he and about 40 others met at Monterey "to march on the mines" but did not get organized for lack of a leader (R. 233), whereupon Clemons, knowing that some Meadow Creek employees

[32] See Findings of Fact 26-29 (A. 6-7); Conclusion 5 (A. 11).

would be coming to the mines, "decided to take some boys out there and stop them" (R. 234) and, armed with a pistol and accompanied with about fifteen or twenty men (R. 234-5), Clemons stopped a car in which were three Meadow Creek employees, called them scabs and told them "We have come to shut you down" (R. 235). No blows were struck (R. 243-4). Admitting he used "some pretty rough talk" (R. 235), Clemons declared that he did not point the gun at the men and that he "apologized . . . *for the language*" *used and told them he "was sorry"* he had talked to them in such manner (R. 236). There is no evidence that Ridings had any connection with this incident and Ridings testified affirmatively that he had none (R. 270).

Three days later, when Clemons was returning home from work with two other union miners, they were attacked by three non-union workers (Tennessee Coal employees) who, blocking the road with their car, shot through the windshield of the car in which Clemons was riding and shot off Clemons' right thumb and broke two other fingers and a later shot struck Clemons in his side and back (R. 244-8). More than a year later Clemons wrote a letter to UMW's President Lewis, explaining his injuries and that he "had been trying to help organize" (R. 253), and inquiring whether, because of his permanent physical impairments as a result of the shooting, UMW could pay him for the injuries suffered (R. 249-50, 604). While Clemons denied that UMW ever paid him anything for services in connection with the organizational activity (R. 238), or that he even sought compensation for services (R. 249), or that he was ever paid anything therefor (R. 251), the matter was referred to District and investigated by Ridings, who discussed with Clemons the situation. In June, 1950, Clemons re-

ceived five thousand dollars (R. 238, 250-1) from District (R. 605), for which he executed to the District a releasement (R. 606, 1004).

Although Clemons testified he was not employed in any capacity by UMW during the 1948 period (R. 240), held no official position with that organization, acted under no instructions or orders from any UMW official and what he did was his own individual conduct (R. 241, 242), and that no one connected with UMW had asked him to be armed (R. 243), the District Court found that Clemons "had been very active in aiding and assisting defendant in its activities in connection with" the Meadow Creek mine (R. 40, Finding 34) and concluded it was one of the "acts and conduct" which constituted "an unlawful interference with the plaintiff's business, in violation of the plaintiff's rights under the common law obtaining in Tennessee" (R. 43, Conclusion 5).[33]

Tennessee Coal signs a UMW contract on July 13.

Early in July, Meadow Creek's Ray and Morgan negotiated an agreement with Allred[33a] and his associates to take over Meadow Creek's mine management. At Ray's suggestion, Allred purchased Vaden Lackey's stock in Tennessee Coal, and Allred became that company's president (R. 507-8, 512). Under the arrangement, salaries of Tennessee Coal's officials were paid by Meadow Creek; 30% of Meadow Creek's profits were to be paid to Allred and his associates (R. 512), and none of such profits were to be paid to Tennessee Coal (R. 512-13). Thereafter, Allred met with Ridings, Bell, Brown and District 19's

[33] While the Sixth Circuit did not, with specificity, delineate the Clemons incident as attributable to UMW, it did so in its affirmance of the district court's 41 separate findings (A. 29).

[33a] Jonathan A. Allred and his partners had operated a mine near Meadow Creek's mine (R. 503-5).

president Vales (R. 513-4, 598), and in July, an agreement between Tennessee Coal and UMW was reached (R. 526-7, 598-600). Coal production continued thereafter until November 30, 1953, when Meadow Creek sold its mine to Clinchfield Coal Corporation (R. 78).

b. The issue of compensatory damages.

According to Meadow Creek's evidence, and both courts so found (R. 41, A. 9, 29), mining and working conditions at Meadow Creek's mine were good, there was a vein of coal averaging 5½ feet in thickness, and during 1947 Meadow Creek mined about 217,000 tons, about one-third of which was transported by truck and the rest by railroad, netting Meadow Creek a profit for that year of $374,149.17. Meadow Creek's Ray testified that in January, 1948, for a nine-day production period, which included January 12, Meadow Creek produced approximately 1,100 tons a day (R. 55-58). The district court found the net profit of this coal to be an average of $3.13 per ton. During 1948, Meadow Creek and Tennessee Coal produced more than 73,000 tons, on which Meadow Creek's profit, before federal taxes but after deductions to Tennessee Coal for its operational costs and profits, amounted to $73,415.32 (R. 959-61).[34]

For February and March, 1948, during which no coal was sold, Meadow Creek lost $8,281.66 (R. 73-4), and although the mine resumed operation on April 17, it lost a total of $23,379.17 during (R. 74) April, May and June, despite the fact, which both the trial and appeals courts ignored, that the mine was operated without picketing and without any incident, and that while only about 40 men worked, the remaining 129 employees re-

[34] The district court made no mention of this fact in its findings, nor does the Sixth Circuit's opinion.

fused to do so because of the lack of a UMW contract (R. 140, 148-9).

The evidence establishes that although eight to ten employees reported for work on January 13, plaintiff determined that it was unable to operate the mine and closed it completely, and while Ray contended that he did "everything possible to minimize my losses" (R.), on January 22 he left for Florida, as was his custom; he made no effort to contact union representatives upon his return from Florida in March; he unconcernedly returned to Florida and did nothing about attempting to reopen his mine until, on his return from Florida in April, his "key men" asked him to let them run the mine, telling them that "the way I was feeling . . . I was through with coal business" (R. 889).[35] Neither the district court nor the Sixth Circuit gave any consideration to these facts, yet ascribing fault to UMW because union representatives had "requested" no meetings (R. 35, A. 4).

While there is no contention on Meadow Creek's part that following execution of the UMW contract in July, UMW was guilty of wrongful conduct, and the record shows that production was curtailed voluntarily by the operating company after the contract's execution (*post*, p. 53-9), the Sixth Circuit approved the district court's finding that UMW had caused Meadow Creek "to suffer damages to its business for the year 1948, principally for the first half of that year" (R. 41-2, A. 31).

In its findings, the district court noted that Meadow Creek had a contract effective January 1, 1948, and continuing through 1948, and longer, with Tennessee Valley Authority for a quantity of coal to be shipped daily (R. 41), and this was an element upon which the district court based its award of compensatory damages (R. 41-

[35] Such was Ray's testimony upon pre-trial examination (R. 889).

42). In view of the district court's awarding Meadow Creek damages "to its business for the year 1948" (R. 42), it is pertinent that while Meadow Creek supplied Tennessee Valley Authority a total of 2,752 tons of coal during that portion of the 12 days Meadow Creek operated in January, for the months of September and December, 1948, it supplied the Authority with only 3,497 and 7,800 tons, respectively. Such shrinkage in coal delivery in the last half of 1948 to the Authority was not due to transportation difficulties (R. 178-9) nor to labor troubles but to the fact that Meadow Creek operated on far less than a full-time basis after execution of the collective bargaining agreement: it operated 20 days in August, 19½ days in September, 21 days in October, 12 days in November, and 10 days in December (R. 915-19). A Meadow Creek witness, asked why, in "the best season", Meadow Creek did not employ more men, answered, "Offhand, I don't know" (R. 499). Likewise, Meadow Creek's Morgan could not answer the question why more coal was not produced during the latter part of 1948 (R. 331), but admitted that the Authority accepted all the coal that Meadow Creek shipped (R. 294). Nor could Morgan explain why twenty-odd men had been laid off in September or October (R. 333).

Although the Sixth Circuit approved the district court's findings that Meadow Creek "had in excess of 500 truck customers of different truck owners scattered over a large area in Tennessee and Kentucky" (R. 37, A. 6, 29), and that "the drivers and owners of the 500 or more trucks . . . were placed in such fear of bodily harm that they did not return to the mine for coal until a" UMW contract was signed, and this is one of the elements on which the district court based its award of damages (R. 42), Ray was unable to give the names of the 500, testifying, "I think with time I could give you 500 names of

people that hauled coal from our mines; it would take a week or two to do it, but I think I can get it up" (R. 175).

No consideration was given by either the trial or the appeals court to the fact upon the strike's conclusion, Tennessee Coal, in operating the Meadow Creek mine, employed only 66 men, 33 of whom had worked during the strike and 33 were employed at the strike's end, and that although virtually all of the other striking employees were available for work, they were not employed at Meadow Creek mine (R. 497-8, 527-8).

The district court did not explain the method it employed in the assessment of compensatory damages, but found that $300,000.00 was a "fair amount" to compensate Meadow Creek for its losses (R. 42). The Sixth Circuit found "adequate substantial evidence to support the award" without explanatory factual or legal supporting reasons or citations (A. 31).

c. The issue of punitive damages.

The Sixth Circuit approved the district court's finding that UMW "acted wilfully and wantonly and with the intent to damage" Meadow Creek's business (R. 40, A. 9, 31), and its conclusion that by reason of the "wilful and malicious conduct" of UMW in closing Meadow Creek's mine and interfering with its business, Meadow Creek "is entitled to recover . . . punitive damages" of $100,000.00 (A. 12, 31), rejecting UMW's contention that there was no evidentiary predicate for such finding and conclusion. While the district court found that Ray's life had been threatened (R. 35), a finding approved by the Sixth Circuit, the premise therefor was Ray's own testimony that a man named Nixon, a school principal who was not connected either with UMW, District or Meadow Creek (R. 89-90), had told him in March 1948, that Ray

"didn't know how serious the situation was", and asked him if he had not read about a railroad president "in the Chicago country being slain by a bunch of labor racketeers up in Illinois", and that Nixon intimated to him (Ray) that the latter "was in a very dangerous position" and "liable to be hurt at any time, seriously hurt" (R. 86); and Morgan's story that he heard Huey Brown make the statement though it was not directed to him (Morgan) [R. 318]—that "if anything happened to him [Brown], Turner Ray wouldn't last ten minutes" (R. 286).

Reasons for Granting the Writ

I.

The Sixth Circuit's approval of federal jurisdiction asserted herein by a district court over a state common-law damage action growing out of a labor dispute between a union and a primary employer admittedly engaged in commerce within the Act's Section 303, when conjoined with an unsustained federal claim under that section, presents the issue of the implementation of the doctrine of ancillary or pendent jurisdiction in the field of labor law. There is thus presented an important federal question in the administration of said section which has not been, but should be, settled by this Court. Heretofore, the "importance of the jurisdictional issue involved" has grounded the issuance of certiorari. *Bell* v. *Hood*, 327 U. S. 678, 680.

The Sixth Circuit's decision and judgment are totally discordant with the Congressional intent in its enactment of Section 303; they inappropriately implement the doctrine of ancillary or pendent jurisdiction enunciated in *Hurn* v. *Oursler*, 289 U. S. 238; they transgress this Court's enunciated criteria for determining the limits of federal district court jurisdiction of non-federal involvements, absent the element of diversity of citizenship;

they conflict with decisions of other federal courts of appeals, particularly that of the Fourth Circuit's *United Mine Workers of America* v. *Patton*, 4 Cir., 211 F. 2d 742 (1954), as well as those of federal district courts; and they are at odds with previous Sixth Circuit's decisions.

In holding that under the facts as found by the district court "the claim of secondary boycott" under Section 303 and "unlawful conspiracy are not separate causes of action, but merely different grounds to support a single cause of action", the Sixth Circuit necessarily overlooked and ignored the legislative history of Section 303, which shows that lack of a federal cause of action for damages resultant from alleged wrongful union activities and the right to sue therefor in federal courts was the motivating occasion for Congress' adoption of the Act's Section 303. Its legislative history records that as originally proposed and passed in the House of Representatives federal district courts would have been vested with jurisdiction to try damage actions based upon causes of action involving virtually every type of interference arising in the course of a labor dispute.[35a] While Congress, in enacting Section 303, was "concerned with reshaping labor management legal relations",[35] it rejected the extension of federal jurisdiction to the adjudication of labor dispute damage actions except insofar as that section "describes and contains specific union conduct directed to specific objectives". *Cf. Local 1976, United Brotherhood of Carpenters, etc.* v. *National Labor Relations Board*, 357 U. S. 93, 99, wherein this Court made it clear that a "primary employer", such as is Meadow Creek in the case at bar, "with whom the union is principally at odds, has no

[35a] Legislative History of the Labor Management Relations Act, 1947, Vol. I, p. 158, 204. Section 12 of H.R. 3020, as passed House, is copied herein, Appendix III, p. 33.

[35] *International Longshoremen's etc. Union* v. *Juneau Spruce Corp.*, 342 U. S. 237, 241-2.

absolute assurance that he will be free from the consequences" of Union activity "by means other than those proscribed" in Section 303 (357 U. S. 99).[37] The Section's legislative history teaches, too, that in its enactment of Section 303, Congress created a new *cause of action*,[38] and this has been judicially recognized in the federal courts. *Schatte* v. *International Alliance, etc.*, 9 Cir., 182 F. 2d 158; *Fatato, Inc.* v. *Beer Drivers Local Union 24*, DC, N. Y., 1950, 93 F. Supp. 481; *Banner Manufacturing Co., Inc.* v. *United Furniture Workers of America*, DC, N. Y., 1950, 90 F. Supp. 723. In creating this federal cause of action, Congress not only restricted such cause to activity expressly interdicted therein, but the Fourth Circuit's decision in *United Mine Workers of America* v. *Patton, supra*, rejected the contention that punitive damages were within the remedy of damage actions permitted under Section 303(b). Notwithstanding the total lack of any legislative indicant of Congressional intent to vest federal district courts with ancillary or pendent jurisdiction to determine common-law actions cognizable in state courts in connection with an alleged cause of action based upon Section 303, and despite positive legislative proof that Congress wittingly withheld from federal courts jurisdiction to try damage actions based upon union activity not condemned in Section 303, and that punitive damages were not recoverable, the Sixth Circuit's sanction of the district court's assertion of jurisdiction in the instant case and of its award of judgment for

[37] While the Court was dealing in *Local 1976* with Section 8(b)(4)(A) of the Act, since the proscriptions contained in Section 8(b)(4) parallel those forming the cause of action in Section 303, the Court's language is apposite in the case at bar.

[38] In the debates concerning Section 303, inquiry was directed at Senator Taft as to whether "all" the amendment would do, if adopted, would be to *create a cause of action for damages* . . . in a Federal court", to which Senator Taft replied, "That is correct". Legislative History of the Labor Management Relations Act, 1947, Vol. 2, p. 1372.

both compensatory and punitive damages based upon a "violation of the plaintiff's rights under the common law obtaining in Tennessee" (R. 43), achieves "that which Congress refused to enact into law" and, as this Court stated in *Colgate-Palmolive-Peet Co.* v. *National Labor Relations Board*, 338 U. S. 355, 364, "cannot be sustained".

The Sixth Circuit's approval of the district court's jurisdiction is likewise inconsonant with comparable judicial expressions in litigation involving other federally-created causes of action. In *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 483-4, a sit-down strike involvement, this Court stated that in a "suit, in which no diversity of citizenship of the parties is alleged or shown, *the federal courts are without authority to enforce state laws*", and that federal jurisdiction "is to vindicate such federal right as Congress has conferred . . . and violence . . . however reprehensible, does not give the federal courts jurisdiction". So, too, in *Hunt* v. *Crumboch*, 325 U. S. 821, 826, wherein plaintiff relied upon acts alleged to be violative of the Sherman Anti-Trust Act were identical to those which would have been considered under Pennsylvania's common law, this Court stated that "Whether the respondents' conduct amounts to an actionable wrong subjecting them to liability for damages under Pennsylvania law *is not our concern.*"

Both the district court and the Sixth Circuit declared *Hurn* v. *Oursler*, 289 U. S. 238, "to be determinative of the" jurisdictional issue. That they improperly employed the *Hurn* case to sustain the district court's non-federal-claim jurisdiction is mirrored by the Reviser's Notes to the Judicial Code (28 USC) in connection with Section 1338 thereof. As revised, that section expressly grants jurisdiction of a "claim of unfair competition when

joined with a substantial and related claim under the copyright, patent or trademark laws", and the Reviser explains that joinder "is intended to avoid 'piecemeal' litigation" and that such revision would enact "as statutory authority" the *Hurn* doctrine.[39] Reference to that doctrine in relation to Section 1338, and its absence in the other jurisdictional sections of the Judicial Code, demonstrate clearly that applicability of the *Hurn* doctrine which would permit joinder of a non-federal claim was restricted to Section 1338 cases. Such indicated restriction, coupled with Congressional failure expressly to provide for like joinder in instances arising under Section 303, fully sustain petitioner's assertion that *Hurn* and kindred cases have no applicability to Section 303 claims.[40]

Further, to sustain the conclusion of existent jurisdiction, the trial and appeals courts both declared (R. 42, A. 10-11, 24) that the "*material and operative facts supporting* the plaintiff's federal claim of secondary boycott *are substantially the same* as the facts supporting its non-federal or state claim of an unlawful conspiracy to injure its business." The vice of that position is that were this true—and petitioner denies that it is—a state common-law action supported only be evidence reflecting violation of Section 303 would be precluded under the doctrine of federal preemption, because Congress would have provided a federal remedy sounding in damages for viola-

[39] Cited also is *Musher Foundation* v. *Alba Trading Co.*, 2 Cir., 127 F. 2d 9 (1942). See Reviser's Note, 28 U.S.C.A. 1338 p. 66.

[40] Fortifying petitioner's position is the following st[illegible]t from an article "The Proposed Revision of the Federal Judicial Code", 60 Harvard Law Review 424-437, where (at p. 431) it is said:

> "In restricting the scope of the provision concerning joinder of nonfederal question to patents, copyright, and trademark cases, the proponents of the bill *have failed* to take advantage of an opportunity *to resolve the larger question of such joinder as applied to all types of cases involving original jurisdiction.*"

tions of Section 303. Since the federal claim may concern only the limited prohibited acts set forth in Section 303, if the involvements fell within the sweep of the statute only, the issue of jurisdiction to determine the common-law (nonfederal) claim would become obviated.[41]

Actually, however, the "material and operative facts" are not substantially the same.

The facts disclose that the dispute herein was essentially one between a labor group and the owner of the Meadow Creek mine, whether the dispute be considered as of the time when Meadow Creek itself operated the mine or subsequent to the formation of Tennessee Coal. This dispute was the occasion for the mine's closing; and whether this cessation of operation resulted through employee fear, as both the trial and appeals courts held, or resulted from collective employee desire to obtain benefits derivative from union membership, and Ray's determination not to operate on a union basis, as petitioner insists, it was primary activity which differs both as *matter of fact* and as *matter of law* from conduct violative of Section 303. The core of the dispute was the January 12 meeting at the mine, the speeches to the em-

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[41] The Sixth Circuit's citation (A. 23) of *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, does not support the Court's jurisdictional holding. In that case, the common law tort action was instituted in a *state* court, and the issue in the United States Supreme Court was limited to the determination whether in enacting the Section's 8(b)(1)(A) Congress precluded *state* court jurisdiction in a common-law tort action based upon conduct interdicted by that section. In answering that issue in the negative, the Supreme Court reasoned that "Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct" (347 U. S. 663-4). What was the lacking remedy in the *Laburnum* situation, namely, a federal cause of action for damages, is provided for in Section 303(b) for injuries resulting from conduct proscribed under Section 303(a): hence, the inappositeness of the *Laburnum* case.

ployees, the work stoppage by Meadow Creek employees, the benefits provided to strike employees, the railroad dynamiting incident,[41a] and they are all matters material to a consideration of the strike's legality and the means used therein and all are pertinent under the common-law cause of action; yet such facts have no significance whatever to an asserted Section 303 violation. Congress did not make primary activity the basis of a *civil* action, regardless of the means involved; and this Court so indicated in *NLRB* v. *International Rice Milling Co.*, 341 U. S. 665, 672, when it professed that in enacting the secondary boycott provisions of the Act,

> "Congress did not seek . . . to interfere with the ordinary strike",

noting that the legislative history declared that the "primary strike for recognition (without a Board certification) is not proscribed" (341 U. S. 673, fn. 8). Congress' purpose as it related to secondary activity, we have been told by this Court,[42] was to restrict union conduct which effectuated *"the coercion of neutral employers, themselves not concerned with a primary labor dispute"*, and Section 308 *"describes and condemns specific union conduct directed to specific objectives"*. It is thus clear that Congress sought to limit the forces to bear in a labor dispute to those which the disputants could themselves directly muster; but, for such pressures, Congress provided no federal civil action. Recognizing a fundamental and traditional difference in the pressures attending primary activity from those existent in secondary-activity pres-

[41a] In a recent case, the National Labor Relations Board determined that inducement of a train crew was not violative of the Act's Section 8(b)(4)(A), because "Railroad employees are not 'employees' within the meaning of the secondary boycott provision of the Act." *Great North.. n Ry. Co.*, 122 NLRB No. 164 (February 13, 1959). 43 LRRM 1324.

[42] *Local 1976, United Brotherhood of Carpenters* v. *NLRB*, 357 U. S. 93, 98, 100.

sures, though not making "any wholesale condemnation of secondary boycotts",[4] Congress carved certain activities out of the total area of industrial conflict between labor and management and provided a complete, separate, distinct and new cause of action for union conduct expressly banned by Section 303 and, significantly, in vesting federal district courts with jurisdiction to determine damage actions based upon violations of that statute, it restricted such jurisdiction to a federal claim.

In its agreement with the district court's conclusion that the "cause of action" was "the violation by" UMW of Meadow Creek's "right to be free from wrongful interference with its business", both courts overlooked the fact that Meadow Creek's federal right is a totally different one from its common-law right; and that whereas the common-law right is relatively unrestricted, the federal right, as Congress has provided it in Section 303, is a limited one, and wholly distinct from the common-law right.

The Sixth Circuit deemed it "unnecessary to labor the point that there appears adequately sufficient evidence . . . to support" the district court's findings that UMW "set out by violence and threats of violence against appellee, its employees and customers, to accomplish its objective of 'organizing' " Meadow Creek's mine (A. 29); yet the irrelevancy of "violence and threats" thereof to a cause of action based upon Section 303 is manifested by this Court in *International Rice Milling* by its statement that (341 U. S. 672):

> ". . . the violence . . . is not material. . . . The substitution of violent coercion in place of peaceful persuasion would not in itself bring the complained-of conduct into conflict with §8(b)(4). *It is the object*

[4] *Ibid.*, 93, 99.

of union encouragement that is proscribed . . . rather than the means adopted to make it felt."

When it is considered that in the case at bar the Meadow Creek mine dispute was a "primary" one, that Union activity directed solely against the *primary* employer is not banned by Section 303, and that the January 12 acts and conduct which have been judicially condemned by both the district and appeals courts[44] are not violative of Section 303 and could not serve as a factual predicate to warrant a finding of a violation of that section, it is axiomatic that such conduct could not possibly serve to support a federal claim violation. This suffices, it is submitted, to demonstrate the fallacy of the conclusions reached by the two courts that the "material and operative facts supporting" the federal and nonfederal claims "are substantially the same" (R. 42, A. 10-11, 24).

Furthermore, to justify its "judicial economy" doctrine enunciated in the *Hurn* case, this Court rationalized that the federal and nonfederal claims "so precisely rest upon *identical facts* as to be little more than *the equivalent of different epithets* to characterize *the same group of circumstances*" (289 U. S. 246).[45] But the criteria utilized by the Court to justify its conclusion in the *Hurn* and kindred cases are clearly not present in Meadow Creek's common-law claim and its federal statutory claim. As it has been demonstrated, each of these two claims require a different set of circumstances: thus, in the case at bar the federal and nonfederal claims could not and do not "so precisely rest upon *identical facts* as to be little more than the equivalent of different epithets to characterize the same group of circumstances."

Heretofore, where federal jurisdiction of a nonfederal

[44] Findings 6-11 (R. 33-34, A. 2-4, 29).

[45] All emphases herein are supplied, unless otherwise indicated.

claim has been involved, joinder has been denied because of the lack of identity of basic facts. *Strey* v. *Devin's Inc.*, 7 Cir., 217 F. 2d 187 (1954); *Landstrom* v. *Thorpe*, 8 Cir., 189 F. 2d 46, 51; *Kaplan* v. *Helenhart Novelty Corp.*, 2 Cir., 182 F. 2d 311 (1950); *Kleinman* v. *Betty Dain Creations Inc.*, 2 Cir., 189 F. 2d 546 (1951). While the Second Circuit, in *Maternally Yours* v. *Your Maternity Shop*, 2 Cir., 234 F. 2d 538, noted *Kleinman* had been overruled and that the Second Circuit is "now committed to a broader view of pendent jurisdiction," it expressed a cautionary note in its observation that the "broader view" was limited by its assertion that such is the view "at least" in cases arising under Section 1338(b), thus indicating its doubt that it was applicable to situations not falling within that section's ambit. In an action under the Fair Labor Standards Act (29 U.S.C.A., Section 201, *et seq.*), a claim for double-time compensation under an Executive Order was rejected because "the causes of action are wholly unrelated". *Crabb* v. *Welden Brothers*, 8 Cir., 164 F. 2d 797 (1947). The Sixth Circuit itself reached a conclusion inconsonant with that in the instant case when, in *Allen* v. *Barr*, 6 Cir., 192 F. 2d 159 (1952), in a suit for a patent infringement, it was charged also that defendants had infringed plaintiff's trademark and had engaged in unfair competition relating to the patented device and the trademark; but because the trademark infringement concerned a common-law trademark and there was an absence of diversity of citizenship, the Sixth Circuit avowed the district court to be without jurisdiction. In the Sixth Circuit's *French Renovating Co.* v. *Ray Renovating Co.*, 6 Cir., 170 F. 2d 945 (1948), the Sixth Circuit itself proclaimed that a *sine qua non* to district court jurisdiction required "that both federal and non-federal causes rest upon substantially identical facts." Where a

claim for unpaid wages was a ground for suit under a New Jersey statute and also a "claim for the same items" based upon breach of a common-law duty, a district court held that "These are clearly separate and distinct causes of action and not separate grounds pleaded in support of one single cause of action" *Eisenmann* v. *Gould-National Batteries, Inc.*, 1958, DC, E.D., Pa., 169 F. Supp. 862.

In the citations which the Sixth Circuit used to sustain its conclusion of the district court's jurisdiction, it has employed the "identity of facts" test.

In *American Fidelity and Casualty Co.* v. *Owensboro Milling Co.*, 6 Cir., 222 F. 2d 109, the Sixth Circuit sustained jurisdiction of the entire controversy because "the claim arises out of a definite set of facts, which are the same, regardless of whether final recovery . . . is in full or only partial".[46] Likewise, in *Wertanen* v. *Welduction Corp.*, (1957), DC, E. D. Mich., 151 F. Supp. 440, in sustaining a claim under the Fair Labor Standards Act and a state claim, the district court noted that "a single set of facts supports both claims". Hence the supporting citations are of no precedent value.

Totally challenging the Sixth Circuit's decision that the federal district court had jurisdiction of a state claim, the Fourth Circuit, in *United Mine Workers of America* v. *Patton, supra*, rejected a contention that in a Section 303 cause of action a federal court was nevertheless warranted in awarding punitive damages for the common-law tort of interference, even though such damages

[46]. It is noteworthy that in the *American Fidelity* case the jurisdictional defense related to the *jurisdictional amount*. The case was not concerned with federal and non-federal claims, but with one cause of action arising under the common law and the other arising under a Kentucky statute.

were not recoverable under the federal statute.[47] Holding that Section 303 "makes no provision for the recovery of punitive damages", the Fourth Circuit declared that:

> "This is not a case brought under the diversity jurisdiction of the federal courts to enforce a common-law liability . . . *and the plaintiffs are entitled to invoke the jurisdiction of the federal courts only because they sue on a cause of action created by a federal statute, i. e., on the cause of action created by Section 303(b) of the Labor-Management Relations Act . . .*"

If ancillary or pendent jurisdiction is sustained herein, and all that is required to sustain jurisdiction in a damage action growing out of a labor dispute is to allege conduct violative of Section 303, then, it is submitted that virtually all labor dispute cases allegedly offensive to state common law have been brought within federal jurisdiction, thereby increasing the federal courts' case load far beyond Congress' intention and contemplation in enacting Section 303.

2.

Even though ancillary or pendent jurisdiction of the common-law state action is warranted—which petitioner denies—, a question concomitant therewith is whether the federal courts in determining a labor organization's responsibility for a common-law or nonfederal claim

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[47] In the *Patton* case, plaintiffs asserted, in their *Patton* brief in the Fourth Circuit (p. 34) that "The evidence is such to establish not only secondary boycott as made unlawful by the Taft-Hartley law but also the common law tort of interference with the contract right . . . In such a case where the federal question, to-wit, the secondary boycott under the Taft-Hartley Act, is not plainly wanting in substance, the federal court, . . . may nevertheless retain and dispose of the case upon the non-federal ground", citing the *Hurn* case. This contention appears too in *United Mine Workers of America* v. *Patton*, *supra*, as reported in 47 ALR 2d 850, 855.

must employ the standard or test of liability provided in Section 6 of the Norris-LaGuardia Act (29 U.S.C. 106)[48] as petitioner insisted, or whether, as both the district court and the Sixth Circuit concluded, common-law "principles of the law of master and servant, or principal and agent"[49] are applicable. In view of Congress' directive in Section 6 that no labor organization shall be responsible or liable "*in any court of the United States*" except upon such proof as is set forth in the section, it is clear that the Sixth Circuit has founded UMW's liability in a manner totally contrary to Congressional directive and poses a substantial and important federal question which this Court has not yet, but should, settle to aid the federal judiciary.

Norris-LaGuardia's purpose was to limit "the jurisdiction and authority of courts of the United States in labor disputes". *United Brotherhood of Carpenters and Joiners v. U. S.*, 330 U. S. 395, 401.[50] Section 6 of that statute expresses a Congressional purpose to insulate labor unions against responsibility for unlawful conduct of their mem-

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[48] Section 6 reads thus:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

[49] District Court Conclusion 6, A. 11; also A. 25, 29-30.

[50] Section 2 of the Norris-LaGuardia Act (29 U.S.C. 102) reads, in part:

"In the interpretation of this chapter and in determining the jurisdiction and authority of the courts of the United States, as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is declared as follows:

". . . therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the United States are enacted."

bers, agents, employees and officers.[51] That the section's provisions are binding upon all federal courts was this Court's declaration in *United Brotherhood of Carpenters & Joiners of America* v. *U. S.*, *supra*, p. 401. In Section 6 Congress was positive that *actual*, not theoretical, culpability or complicity was to be the test for union responsibility. Repetitive use of the word "actual" in the enactment undeniably evidences Congress' intent that unions be held liable for alleged tortious conduct upon factual realities and not juristic imputations.

The Sixth Circuit emphasized that Ridings was general director of the activities and of the other union members who participated in the acts and was high enough in UMW hierarchy to render that organization liable for consequences of its members' conduct, and that Ridings' operations were "either authorized by" UMW "or ratified after obtaining actual knowledge of the unlawful acts" (A. 30). But there is evident error in the Sixth Circuit's professions when tested by this Court's views in the *Carpenters* case. Therein (p. 406-7), discussing Section 6's word "authorization", it observed that "the requirement of 'authorization' restricts" the liability for officers' or members' unlawful acts, *"although such officers or members are acting within the scope of their general authority"* to associations *"who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type . . . had been expressly authorized, or necessarily followed from a granted authority . . . or was subsequently ratified . . . after actual knowledge of its occurrence."*

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[51] That the instant action concerns an association or organization "participating or interested in a labor dispute" within Section 6's meaning is made clear by a consideration of Norris-LaGuardia's Section 13. Section 13 of the Norris-LaGuardia Act [29 U.S.C. 113(a) and (b)] appears in Appendix IV, hereto, p. 36.

The Sixth Circuit's citation of the Fourth Circuit's *Patton* case in which the Fou: h Circuit applied the common-law agency principle, plainly shows that it did not apply the standard of Section 6. Even if union representatives were authorized to undertake organization of the Meadow Creek employees, authorization to do any of the tortious acts charged is not supported by any evidence, and certainly not by the "clear proof" which Section 6 commands.

Since there is neither clear proof of *actual* participation in, nor *actual* authorization of, wrongful conduct attributed by both courts to UMW, nor ratification thereof after *actual* knowledge, the distinctions between Section 6's requirements and those of the common-law principles applied by the courts herein are very meaningful, not only to UMW, which is presently confronted with a $400,000.00 judgment as a result of the implementation of an improper test of responsibility, but to every other labor organization confronted with defending itself in a federal court damage action based upon a nonfederal claim.

Antedating the Taft-Hartley Act, this Court gave full judicial recognition to Congress' intent and purposes in the *United Brotherhood* case, following which Congress, in enacting Taft-Hartley, sought to negate the effect of such decisional recognition by defining the term "agent" so as to reinstate the application of common-law principles, but only as to certain sections, among them, according to the *Patton* case, Section 303. The Second Circuit has noted that while Congress "expressly lifted

the bar of the Norris-LaGuardia Act"[52] in certain sections of Taft-Hartley specifically designated therein,[53] it rejected the contention that the Norris-LaGuardia provisions had been impliedly repealed. Liability against UMW must stem, if at all, from a common-law tort action and, since by Norris-LaGuardia's Section 6 Congress has mandated that all federal courts must apply the standard found therein, it is clear that in applying the common-law "master-servant" or "principal and agent" agency rule, both courts' conclusions conflicted with Congress' grant of authority and with this Court's pronouncement in *United Brotherhood* (330 U.S. 410) that:

> "Our only point is this: Congress in § 6 has specified the standards by which the liability of employee and employer groups is to be determined."

The Sixth Circuit's heavy reliance (A. 25) upon *Laburnum* and *Patton* cases to support its conclusion that the common-law principles form the test of UMW's responsibility manifests further error. *Laburnum*, an action originating in a Virginia *state* court, came to the United States Supreme Court with a single issue, namely, whether federal preemption foreclosed a state-court action for damages based upon conduct falling within Taft-

[52] *A. H. Bull Steamship Co.* v. *Seafarers' International Union*, 2 Cir., 250 F. 2d 326, 41 LRRM 2121, 2125. While the *Bull* case dealt with Norris-LaGuardia's Section 4 (29 U.S.C. 104), its discussion that Section 301, Taft-Hartley, "did not expressly" nor impliedly "withdraw the restrictions of the Norris-LaGuardia Act" is cogent in the case at bar since Section 303(b) is made subject to Section 301 and the Fourth Circuit in the *Patton* case (211 F. 2d 742) has held that "common law rules with respect to liability for acts of an agent" apply in actions under Section 303. See the agency definition found in the Act's Section 301(e) [29 U.S.C.A. 185(e)] in the Appendix hereto, p. 38. Cf. *W. L. Mead, Inc.* v. *Int. Bro. of Teamsters*, 1 Cir., 217 F. 2d 6, 9.

[53] Sections 101(h), 178(b) and 302(e) of Taft-Hartley [29 U.S.C. 160(h), 178(b), and 186(e).] See also 93 Cong. Rec. 6609, 7001; Legislative History of the Labor Management Relations Act, 1947, Vol. 2, 1552, 1622.

Hartley's Section 8(b)(1)(A); no question concerning Norris-LaGuardia's Section 6 was involved. So, too, in *Patton*, the Fourth Circuit declared that plaintiffs therein could invoke federal jurisdiction "only because they sue on . . . the *cause of action created by section 303(b)*", [211 F. 2d 749]; and since UMW liability herein is founded upon a common-law state action, the Sixth Circuit's use of *Patton* as supporting precedent is wholly discredited.

Further demonstration of the Sixth Circuit's error is found in its additional citations of its decision in *Lewis* v. *Benedict Coal Corporation*, 6 Cir., 259 F. 2d 346, which concerned the application of the common-law rule of agency under Section 301(e), and its comparison of *Patton* with the Sixth Circuit's approval of *Garmeada Coal Company* v. *International Union, UMWA*, (1954), DC, E.D., Ky., 122 F. Supp. 512, aff'd. 6 Cir., 230 F. 2d 945, which also involved an agency question under 301(e) and wherein the district court's rejection of vicarious liability was approved by the Sixth Circuit.

It is thus evident that both the district court and the Sixth Circuit have employed a totally erroneous test in finding and concluding that UMW is liable in the instant case and in imposing upon it a money judgment of $400,000.00. Clearly, this obviously erroneous judgment should be reversed through review by certiorari sought herein.

3.

If this Court should sustain ancillary jurisdiction herein to determine involvements of common-law tort actions, then review by certiorari of the courts' compensatory damage award of $300,000.00 is important herein to correct manifest error and prevent a gross miscarriage of justice, and also that the federal judiciary be aided in future comparable cases. "Because of the importance of

the problem presented", certiorari should be granted. *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U. S. 251, 254.

Petitioner has detailed herein (p. 33, *et seq.*) the factual situation relating to the compensatory damage award and submits that the proof adduced does not form an adequate basis for a reasoned judgment.

Though this Court has approved a reasonable estimate of damages based on relevant data, it has declared that an award must not be based on speculation or guesswork. (*Story Parchment Co.* v. *Paterson Parchment Paper Co.*; 282 U. S. 561-4; *Bigelow* v. *RKO Radio Pictures, Inc.*, *supra*, p. 264) and that proof of the damages sustained is the plaintiff's burden. *Robertson* v. *Blake*, 94 U. S. 728; *Jones* v. *Tenn. Central Ry. Co.*, 8 Tenn. Apps. 183.

While the district court professed its award to be based upon the "entire record" (A. 10), close scrutiny of the various findings relating to damages (R. 41-2) readily discloses that it employed no mathematical formula in determining that the award should be $300,000.00. To the contrary, the following discussion will amply show it is based upon speculation and guesswork, and is challenged by undisputed evidence. The Sixth Circuit swept aside petitioner's contentions without in any manner attempting to answer UMW's assertions and with a mere "Undoubtedly, there was adequate substantial evidence to support the award . . ." (A. 31).

Since the district court found Meadow Creek's 1947 profit to be $374,149.17 (R. 41, 951-3) and the evidence shows its 1948 profit to be $73,415.32 (R. 959-61)—a difference of $300,733.85—it is a reasonable conclusion that the $300,000.00 award was fashioned by the method of ascertaining the difference between profits for the two years, although both courts ignored the element of the 1948 profit.

Demonstration of the courts' employment of an entirely erroneous yardstick is that although the mine operated under a UMW contract after July 13 and without incident imputable to UMW, the Sixth Circuit nevertheless sanctioned the district court's allowance of damages *"for the year 1948, principally for the first half of that year"* (A. 10). The evidence manifests clear error and injustice in such a measure for the damage award.

Elemental is the postulate that damage recovery is limited to such as is the natural and proximate result of the wrongful act proved.[54] During 1948's second half, coal production at the mine grossly decreased from 1947's production, yet the evidence is devoid of any showing of causal connection between that fact and any acts and conduct imputed to UMW. Though Meadow Creek had not lost its contracts with Tennessee Valley Authority and it admittedly had ample sales for all coal it could produce (R. 145-6), curtailment of production was its own voluntary action: it employed only 33 of the approximately 130 strikers though virtually all of them were available for work; there was no lack of transportation facilities (R. 178-9); there was no labor trouble; and in September or October "20-odd" of its employees were laid off (R. 333). Meadow Creek witnesses could give no explanation for the cut-off (R. 333), or why more coal was not produced during the latter part of 1948, or why, in the "best season" Meadow Creek did not employ more men. (R. 499) Any decrease of production and attendant loss of profits are necessarily not attributable to any UMW conduct and it is clear that the district court erred in assessing damages for the full year 1948, and the Sixth Circuit did likewise in approving both the measure and the award. Correction of these palpable errors mandates the issuance of certiorari herein.

[54] 15 Am. Jur., Damages, Section 133, p. 541-2.

Furthermore, actually during 1948's second half, the production rate per man actually increased and the net profit per man was greater in 1948 (despite payment of the union wage scale) than during the corresponding 1947 period (R. 901-3, 915-17).[55]

Moreover, even as to the year's first half, the mine's closing resulted from Ray's adamant determination to terminate coal production rather than to bargain collectively with union representatives representing a majority of the employees. Ray's self-serving assertion of doing everything to minimize the losses is totally beclouded by admitted acts and statements. Had Ray as an employer been concerned about continued operation of his mine he would not have gone to Florida, as Ray did, ten days after the January 12 incident. His unconcern is reflected also in his admission that he made no effort either to contact union representatives or to leave instructions to arrange a meeting with them. Though Ridings and Brown contacted Meadow Creek's Morgan in an attempt to have a meeting, and Ray knew it (R. 315), upon his two returns from Florida Ray made no effort to communicate with them or to attempt to effect a bargaining meeting. Despite these admissions, and notwithstanding Ray's telling his "key men" at the mine upon his return from Florida in April, that "the way I was feeling . . . I was through with coal business" (R. 889), both the district court and the Sixth Circuit refused to take notice of Ray's admissions but imputed fault to UMW because union

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[55] A comparison of the net profit for the 1948 months with those in 1947 shows:

August, 1947	$1.92 per ton (R. 901)
August, 1948	2.10 per ton (R. 915)
September, 1947	2.15 per ton (R. 902)
September, 1948	2.60 per ton (R. 916)
October, 1947	2.68 per ton (R. 903)
October, 1948	3.04 per ton (R. 917)

representatives had not requested meetings (R. 35, A. 4, 17).

The Fourth Circuit,[56] in a comparable situation, rejected an employer's claim for damages growing out of a labor dispute where the business had been closed and the owner went to Florida, as Meadow Creek's Ray did herein; and noting the employer waited two years to bring its damage action—*whereas Meadow Creek waited six years*—the Fourth Circuit said:

> *"It is a most pertinent circumstance as bearing upon the bona fides of plaintiff's claim that action was not instituted until more than two years after the occurrences now relied upon . . .* as giving rise to the damages claimed."

Furthermore, Meadow Creek's mine operated from April 17 until late June when the alleged railroad dynamiting occurred; and even if that act is imputable to UMW (which it denies, see discussion, *post*, p. 68-71), UMW may not be charged with Meadow Creek's decreased production and consequent alleged loss of profits during the April 17-June 23 period since the record fully establishes that the miners on strike refused to work because of the absence of an UMW contract. No evidence is available in a voluminous record that employees remained away from work because they were afraid or of any conduct which may be attributed to UMW. To the contrary, in refusing to work at the Meadow Creek mine the employees were exercising a right, constitutionally guaranteed to them and legislatively recognized in Section 7 of the Act,[57] and it "was the exercise of these rights that created the situation which caused" Meadow Creek "to lose . . . its business". *Hunt* v. *Crumboch*, 325 U. S.

[56] *United Construction Workers* v. *Haislip Baking Co.*, 4 Cir., 223 F. 2d 872, 876 (1955).

[57] *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33, 34; 29 USC 157.

824. It is indeed an anomaly that the exercise of "allowable conduct" by these employees should serve as a medium for the imposition of a money judgment of $400,000.00 (both compensatory and punitive damages) against the employees' designated collective bargaining representative. *Cf. U. S.* v. *Hutcheson*, 312 U. S. 219, 234.

Another element further demonstrates how fallacious is the award of compensatory damages approved by the Sixth Circuit. Since the predicate for the compensatory award is loss of profits, it is significant to recall that in 1953 Meadow Creek sold all of its coal to Clinchfield Coal Corporation; and, since coal can be mined and sold only once, had it been mined in 1948 it would not have been available for sale to Clinchfield in 1953. Since Meadow Creek had the burden of establishing its loss of profits and they may not be presumed by courts, it was of course incumbent on Meadow Creek to show that its alleged loss in 1948 because of its not producing coal was not overcome by its sale of the same coal to Clinchfield. This, Meadow Creek has not done. The legal implication is to give Meadow Creek a double recovery.

Whatever may have been Meadow Creek's 1947 experiences in business volume and profits, its prospects for increased business and lower costs in 1948, or the general conditions in the industry,[58] its 1948 experiences as depicted in the instant record, at least beginning with resumption of operations on April 17 through June 23 and again from execution of the UMW contract on July 13, show the eventuality of the uncertainties inherent in the coal industry, and changing circumstances, not resultant of union conduct, which occasioned decreased production and profits, demonstrate that expected profits

[58] These are the factors used by the district court as the predicate for its award (R. 42 A. 10).

are, in their nature, contingent upon many changing circumstances, uncertain and remote at best, and prove the speciousness of the courts' use of such criteria for formulating the compensatory award herein. Their use, and the Sixth Circuit's approval of the award, show with precision clarity that the award and the findings and conclusions on which it is based are totally unwarranted. An award based upon speculation and conjecture, as is the instant one, would have been rejected by the Tennessee appellate court [*Morristown Lincoln-Mercury, Inc.* v. *Lotspeich Publishing Co.*, 298 S. W. 2d 788 (Tenn., 1956)]. In sanctioning the award, the Sixth Circuit has permitted the trial court to "legally guess the money out of one litigant's pocket into that of another." *Bokoshe Smokeless Coal Co.* v. *Bray*, 155 P. 226 (Okla., 1916). Under decisional law herein cited, and the evidence, the award and the findings and conclusions on which it is based, are unwarranted by the evidence and applicable law, and are both erroneous and unjust and should be reviewed and reversed.

4.

The Sixth Circuit sanctioned the district court's assessment of $100,000.00 as punitive damages, opining that "it rested within the sound discretion of the district judge to award" such damages because UMW's conduct, "through its agents, was of such wilful and malicious character as to justify" the allowance (A. 31). Because the Sixth Circuit, as well as the district court, has misconceived the law pertaining to punitive damages so as to be in conflict with the decisional law of both Tennessee and this Court, UMW submits that certiorari is warranted.

In Tennessee, malice is essential for an act to constitute

a tortious interference with another's business,[59] and this Court has judicially defined "maliciously injuring" as conduct done "*malevolently, for the sake of the harm as an end in itself, and not merely as a means to some further end legitimately desired*".[60] A long time ago this Court declared that persuasion and propaganda by a labor union "to enlarge their membership" was not "without excuse and malicious";[61] and now well-established is the postulate that attainment of the legitimate purposes for which labor unions exist is legal justification for interference with an employer's business and that an employer injured thereby is not entitled to damages.[62]

As representative of a majority of Meadow Creek's employees union representatives sought to encourage those who had not joined to do so and to procure from Meadow Creek a higher wage rate than it had been paying its employees and better working conditions through the medium of collective bargaining and an UMW contract. Ray's determined attitude not to deal with union representatives is found in his admission that he advised Ridings that if his men desired UMW affiliation he "would be glad to talk to them" and that his "door was open to any man any time" (R. 57), and to "let them come in and ask for [an UMW contract] and I would answer them immediately and promptly" (R. 128). Neither the trial court nor the Sixth Circuit concerned itself with this recalcitrant employer attitude.

The record affords not a single word to justify that

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[59] *Mann* v. *Third National Bank*, 198 Tenn. 70, 277 S. W. 2d 439 (1955); see also *Nashville, etc. Railway* v. *Harrell*, 21 Tenn. App. 353, 110 S. W. 2d 1032, 1040.

[60] *Aikens* v. *Wisconsin*, 195 U. S. 194, 203.

[61] *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209.

[62] Corbin on Contracts, Vol. 6, Section 1470; Forkosch, A Treatise on Labor Law, p. 398, *et seq.*

union conduct was "malevolently, for the sake of the harm as an end in itself"[63] while, on the other hand, it is abundantly clear that union representatives sought to promote the legitimate interest of Meadow Creek's employees and to effect an objective fully recognized and protected by law (29 U.S.C. 157). Culmination of the strike upon execution of the UMW contract and the workers' return to work under improved working conditions and higher pay is full challenge to Meadow Creek's contention that UMW maliciously sought destruction of its business and amply demonstrates the legitimacy of UMW's purpose in the strike activity. The Third Circuit has realistically recognized that "some disorder is unfortunately quite usual in any extensive or long drawn out strike" which it characterized as "essentially a battle waged with economic weapons" and that violence does not transform a strike for a legal purpose into an illegal form of employer interference as to warrant employee punishment, for, as the Third Circuit declared, "If this were not so the rights afforded to employees under the Act would be indeed illusory".[64]

When it is considered that admittedly no blows were struck; no injuries inflicted or attempted to be inflicted; no Meadow Creek property injured or destroyed; and there is not a thread of evidence of conspiracy to achieve Meadow Creek's closing by force, by violence, or by threats of bodily harm, the Sixth Circuit's declaration that UMW's conduct, through agents, was "of such wilful and malicious character as to justify" punitive damages of $100,000.00 is inconsonant with the evidence. Tested

[63] The district court found that there was "apparent animosity exhibited" by UMW "toward Ray individually" (R. 35). It pointed to no supporting facts because there are none. Also there was a district court finding that Ray's "life had been threatened" (R. 35). A ready answer, showing that UMW was not involved, is found *ante*, p. 36-7.

[64] *Republic Steel Corp.* v. *NLRB*, 3 Cir., 107 F. 2d 472, 479.

by the rule enunciated in the *Aikens* case, there is no predicate for an allowance of punitive damages.

The discussion under Reason 3 is apposite to the instant assertion that there is no supportive warrant in fact or in law for the punitive damage award, since Tennessee decisional law mandates that actual damage is an essential predicate for punitive damages. *Allen* v. *Melton*, 20 Tenn. App. 387, 99 S. W. 2d 219.

Under applicable law and the evidence herein, the award of punitive damages and the findings and conclusions on which it is based are unsupported and unwarranted, and should be corrected by issuance of certiorari herein.

5.

To reach its conclusion that the "means employed by" UMW "to accomplish its purpose were improper and unlawful, consisting of harassment, violence and threats of violence against" Meadow Creek, its employees, customers and others doing business with it (R. 43, A. 11), the district court made findings of fact wholly unsupported and unwarranted by the evidence and totally ignored and failed to consider factual data challenging such findings. In its approval, the Sixth Circuit did no more than to parrot the district court and failed to undertake any explanatory answers to UMW references to unchallenged evidentiary matter vital in a proper evaluation of the record as a whole. Unless, by certiorari, this Court reviews and corrects the manifest errors committed by the district court, with the imprimatur of a federal court of appeals, a gross miscarriage of justice will have been permitted and there will have been fashioned a pattern of liability not only so as to hold labor organizations responsible for monetary damages without

requisite proof but so that state common-law actions may "(stand) as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"[43] expressed in statutes dealing with labor-management relations.

Since union representatives sought herein to achieve a collective bargaining recognition status and contract for employees at Meadow Creek's mine and thereby achieve for them a higher wage scale and better working conditions, it may not be gainsaid that their objective was wholly lawful. The attainment of a legitimate purpose for which labor unions exist is legal justification for interference with an employer's business relationship and an employer injured thereby is not entitled to damages. *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184; *International Bro. of Teamsters, etc.* v. *Missouri Pac. Freight Transport Co.,* 220 S. W. 2d 219 (Texas, 1949).

The primal fallacy committed by the district court was its finding that UMW conspired and determined "to close down" Meadow Creek's mine "by force" prior to the January 12 meeting. Not only is there no evidentiary support for such finding, but the evidence is that more than a majority of Meadow Creek employees lived "in some two or three places" and it was decided to hold a meeting at the mine, typical of other meetings held in organizing compaigns (R. 640) to afford UMW membership an opportunity to talk to those of the Meadow Creek employees who had not already joined UMW (R. 640) and to encourage Meadow Creek employees to refuse to work without a union contract (R. 640-1). Some of the group at the mine on January 12 were former co-workers and one talked with a relative (R. 699-702, 717-18). Com-

[43] *Hines* v. *Davidowitz,* 312 U. S. 52, 67-8.

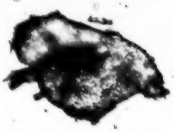
pletely militating against the court's findings of conspiracy and force is the undisputed fact that Ridings sought out Sheriff Higgenbotham to be present at the mine on January 12 "to see there wasn't any disturbance" (R. 820, 823).

The district court's unwarranted finding that union representatives failed to "recruit" a majority of Meadow Creek employees was adopted by the Sixth Circuit; yet the evidence shows that prior to January 12 "upwards of around a hundred" of the 169 employees had accepted UMW membership (R. 553); and during January, 1948, 122 of the employees became dues paying UMW members (R. 963-84, P. Ex. 11). Furthermore, during the strike period about 130 miners of the Meadow Creek mine employees maintained UMW membership; and although 40 of the 169 employees did not join UMW and despite their returning to work when the Meadow Creek mine resumed operation on a non-union basis, they were not in anywise abused, intimidated, or threatened, clearly reflecting that union membership was entirely voluntary and that the courts' findings concerning conspiracy, force, threats of bodily harm and violence are without factual substance. The fact that the courts did not consider these vital matters further evinces their error

Ray's recalcitrancy to bargain collectively with the designated representative of a majority of his employees has already been discussed (*ante*, p. 17-18); and his departure for a Florida vacation further demonstrates his adamant position against entering into an UMW agreement. Conceivably these were Ray's tactics to gain an advantage in the economic struggle between Meadow Creek and his employees; but whatever may have been his motive, operations at the mine were not resumed first, because of Ray's determination not to operate and, sec-

ond, because of the unwillingness of his men to work on a non-union basis. In any event, there is no legal warrant in making UMW responsible for the mine's not operating.

Both courts placed emphasis upon findings that the road was blockaded; that some of the men were "armed"; that employees and officers were threatened with bodily harm and that the mine would not run another day unless the company signed a UMW contract (R. 33-4). Details of these matters appear herein (*ante*, p. 18, *et seq.*). Yet, and most significantly, UMW submits, is the fact that *not a single employee testified that he had been either threatened, coerced or anywise mistreated by any of the group assembled, or that he had refrained from working at the mine following the January 12 events because of being afraid to do so.* While the two courts found that the road was blockaded, the evidence is to the contrary (*ante*, p. 18-19) as related by Meadow Creek's own witnesses, and Sheriff Higgenbotham declared no one complained to him that free access was not available (R. 822). Though there was a finding (R. 33) that some of the men were "armed", of 25 persons who testified that they were at the mine on January 12, 23 saw no guns while 2 related that one unidentified person at the head of the road had a gun (R. 195, 201). Pertinently, even Meadow Creek's official—W. E. Morgan who went to the mine on January 12 to see what was occurring—saw no firearms (R. 280). In a record wherein no one was injured or abused, no sinister inference may be justified from the fact that some of the men were "whittling" or "peeling apples", particularly in view that no Meadow Creek employee complained that he refused to work because of threats or intimidation or because he was afraid to do so. This fact is of utmost importance too in its challenge to the Sixth Circuit's declaration that UMW "set out by



violence and threats of violence against appellee, its employees and customers, to accomplish its objective of 'organizing' appellee's mine" (A. 29). Clearly there is no implication of force in Ridings' admission that he "said everything I knew to say to encourage those that weren't in the Union to get in, and if they felt like staying away until there was a contract, to do so" (R. 641). Certainly the lack of testimony by employees that they were threatened or intimidated is more consistent with Ridings' version of persuasion than it is with the courts' findings. If force had been the order of the day, there would have been no occasion to have a "pensioner" tell the gathered employees what the Union had meant to him and his family (R. 588).

The Tennessee appellate court has made it clear that "Not every threat of a strike, or other attempt to intimidate, will afford a cause of action" but that the "threat must be of a substantial nature, and adapted to influence a person of reasonable firmness and prudence". *Dukes* v. *Local Union No. 437*, 191 Tenn. 495, 235 S. W. 2d 7, 26 ALR 2d 1223, 1227 (1950).[66]

The Sixth Circuit's adoption of the district court's finding that in excess of 100 trucks at the Meadow Creek mine for coal on January 12 (R. 37, A. 6) finds support only in the uncorroborated testimony of the truck driver who related another driver told him trucks were not being loaded (R. 203). But the undisputed evidence of witnesses, such as Meadow Creek's Morgan, the Sheriff and Chief of Police who came to the mine *after* the meet-

[66] A similar test was applied in a criminal proceeding growing out of a labor dispute in *State* v. *Wooldridge*, 129 W. Va. 448, 40 S. E. 2d 899, 913, wherein the West Virginia court said: "... *nothing happened on this occasion which should have supplied reasonable grounds for any apprehension upon the parts of firm, sane and courageous men that a breach of the peace would occur.*"

ing's start and who had no difficulty in entering, counters the truck driver's version, for, had there been 100 trucks lined up attempting to get to the mine, attendant crowded conditions and confusion would have been a material part of the picture and with assurance may it be said that some of those persons would have been placed on the witness stand. Their absence therefrom is significant.

The district court's finding that District's Ernest Stultz went to a coal dealer (Holbert) and threatened to blow up his place if he sold coal from Meadow Creek's mine (R. 37, A. 6), approved by the Sixth Circuit, is rendered entirely incredible by Holbert's further testimony that the incident took place "sometime in the latter part of January" (R. 257), which was at a time when the mine was not operating and had no coal to sell. Moreover, Holbert admitted that he sold the coal on his yard which had come from Meadow Creek and that "we weren't bothered at all", and that upon resumption of operations he bought Meadow Creek coal again (R. 258).

Although Ray was not present at the mine meeting on January 12 and Morgan admitted he (Morgan) had not been threatened (R. 319), the Sixth Circuit's affirmance included the district court's finding that Meadow Creek officials had been threatened (R. 34, A. 3).

The courts' willingness to hold UMW responsible and to impose so enormous a money judgment as $400,000.00 upon it without factual support and in conflict with well-settled legal principles is reflected further in their imputing to UMW the dynamiting incident and the Willard Clemons incident and in attaching wrongful motives in the union's providing striking members with groceries and other merchandise.[67]

[67] Discussions of these matters are found as follows; the dynamiting incident, pp. 68-71; the Willard Clemons incident, pp. 71-2; and the union's supplying members with groceries and supplies, pp. 72-4.

The Sixth Circuit, in agreement with the district court, declared that "the case falls within the principles of the authorities" of *Brumley* v. *Chattanooga Speedway & Motordrome Co.*, 138 Tenn. 534; *Shell Oil Co.* v. *State Tire & Oil Co.*, 6 Cir., 126 F 2d 971; *United Construction Workers* v. *Laburnum Corporation*, 347 U. S. 656; and the Fourth Circuit's *Patton* case (211 F. 2d 742). Neither *Brumley* nor *Shell Oil* were labor dispute cases but instances of fraud, and neither involved the element of justification attendant in the case at bar. *Laburnum*, as decided by this Court, concerned solely the issue of whether a state court had jurisdiction to entertain a common-law tort action for damages; liability had already been determined by the Virginia appellate court,[68] and a feature definitively distinguishing it from the instant case is that in *Laburnum* a number of employees testified that "they would not return to work because the *declarants* were in fear of violence at the hands of defendants' agents" (75 S. E. 2d 709).[69] Citation of *Patton*, too, is abortive: it was not a "civil conspiracy" but an action based upon the Act's Section 303.

Where, as here, the findings and conclusions of liability lack testimonial support and are at war with undisputed facts and with applicable legal principles, their use as a predicate for a money judgment of $400,000.00 should be reviewed and reversed.

6.

(a) As a predicate for its conclusion that UMW had unlawfully interfered Meadow Creek's business, entitl-

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[68] *United Construction Workers* v. *Laburnum*, 75 S. E. 2d 694 (Va., 1953).

[69] See Printed Record filed in this Court in the *Laburnum* case [347 U. S. 656] (No. 188, October Term, 1953, pages 912-14, 925, 864, 846, 947, for statements of some of the employees).

ing Meadow Creek to recover damages and that the means employed were improper and unlawful, both courts found defendant responsible for the dynamite incident, already detailed, *ante*, p. 29-30. Such predicate, UMW submits, is in total conflict with previous pronouncements of this Court.

While neither court declared that the two UMW members arrested in connection with the railroad dynamiting were guilty as charged, they nevertheless imputed responsibility therefor to UMW (1) upon union representatives visiting the two members in jail and taking them fruit and cigarettes, and (2) upon Ridings' request of Tennessee Coal's president, subsequent to the UMW contract's execution, not to prosecute the charges against the two men (R. 515).

Ever since the first Coronado case,[70] the federal judiciary has regarded labor unions as entities wholly distinct from their union membership. This Court made this distinction positive in *U. S.* v. *White*, 322 U. S. 694, declaring that "actions of one individual member no more bind the union than they bind another individual member unless there is proof that the union authorized or ratified the acts in question" (p. 702).[71] Certainly the mere visitation of fellow union members, even though union representatives, may not achieve an agency nor UMW authorization or ratification for conduct of which the two

[70] *United Mine Workers of America* v. *Coronado Coal Company*, 259 U. S. 344, 387, 391.

[71] In the legislative debate on the question of agency during consideration of the Act, Senator Taft stated that ". . . I do not think there is anything in the fact that a Union is an unincorporated association which would bring about a condition in law that the act of every member is necessarily charged to the labor organization" (Legislative History of the Labor Management Relations Act, 1947, p. 1026). Again Senator Taft declared that "The fact that a man was a member of a labor union in my opinion would be no evidence whatever to show that he was an agent." (*Ibid.*, p. 1204-5).

union members, though charged, were not found guilty, so as to impose responsibility upon UMW under the doctrine of vicarious liability.

Nor may Ridings' request of Tennessee Coal's president not to prosecute the two members, made after the contract was signed, be regarded as legally effectuating a union ratification. On a former occasion, in the first *Coronado* case, this Court expressed its unwillingness to hold UMW responsible under the principle of ratification where the UMW president had written a letter thanking the president of the United States for pardoning a district president convicted of a conspiracy for which he had gone to the penitentiary, and later was appointed to a position on a district committee. This Court declared (p. 394) "It would be going very far to consider acts of the president a ratification by the International Board, creating liability for a past tort". Certainly there is less reason to impute responsibility to the union because of request made by Ridings in his capacity.

The railroad incident obviously was a pertinent factor in the courts' conclusion of UMW's liability, and in its fixing the damages against UMW, particularly the punitive award. That the Sixth Circuit regarded it as a significant incident is reflected in its characterization of the incident as "consequential"; yet the Sixth Circuit ignored, without explanation, UMW's contentions with reference to this incident. The Sixth Circuit's result conflicts with *Patton* where the Fourth Circuit grounded reversal, in part, for lack of evidence connecting defendants with dynamitings.

The foregoing discussion fully sustains UMW's position that, under applicable legal principles, there was not sufficient evidence to hold UMW responsible for the railroad dynamiting and that both courts have raised suspi-

cion to the status of fact, heretofore condemned by federal cases. *NLRB* v. *Sun Shipbuilding & Dry Dock Co.*, 3 Cir., 135 F. 2d 15, 31. It manifests the court's commission of error prejudicial to UMW; and it sustains the necessity for the granting of certiorari herein.

(b) Also grossly at odds with the cases above cited is the district court's finding that UMW was responsible for the acts of Willard Clemons, a UMW member, who, with other union members, stopped three employees of Tennessee Coal from going to work, cursed them, berated them for working during the strike, detained them for a short time, and then released them unharmed [See detail of facts, *ante*, p. 30-2]. Clemons, it will be recalled, was a UMW member who worked, not at the Meadow Creek mine, but at a union mine nearby. He was neither an employee nor an agent of UMW. In stopping the men, as he testified, he acted on his own initiative, without authority, direction or influence by union representatives (R. 242).

In discussing the incident, which the Sixth Circuit regarded as "relevant" (A. 20), and which the district court listed as one of the "acts and conduct" of UMW constituting unlawful interference, the district court found that Clemons had been shot by a brother of one of the men intercepted and that payment of $5,000.00 by UMW's check "was made to Clemons because of injuries sustained by him" (A. 8-9). UMW, in the Sixth Circuit, argued that it could not be legally responsible for a member's unauthorized act; that there had been no ratification of such unauthorized act since there was no evidence of intention to ratify, that the evidence did not establish UMW had knowledge of all material facts essential to ratification, and that the evidence showed that Clemons acted on UMW's behalf in stopping the men. 2 Am. Jur.,

Agency, Section 220. UMW pointed out also the district court's error in its finding that payment to Clemons violated UMW's Constitution for the year 1948 which the district court declared prohibited the use of its funds for the payment of any sick benefit or damage to a member. To the Sixth Circuit's attention it directed the fact that such finding was without factual support, and that while UMW's 1944 Constitution provided that local unions "shall be responsible for the payment of sick, accident and death benefit claims" (R. 991), in 1950 when Clemons was paid the money, the 1944 provision was not in effect, it having been deleted in Section 3, Article XIV, UMW Constitution, 1948 (R. 1006). Despite these factual errors, and although UMW, in the Sixth Circuit, directed that Court's attention that a new and unwarranted standard for determining responsibility of labor unions would be established if the district court's decision were permitted to stand, the Sixth Circuit ignored such contentions and, without benefit of judicial explanation, affirmed the district court's findings. UMW asserts again that unless corrected, the decision of the district court and the Sixth Circuit will have established not only a new and unwarranted standard for determining labor unions' responsibility, but they will have done so despite legal precedent to the contrary. *Republic Steel Corporation* v. *NLRB; UMWA* v. *Coronado Coal Co.*, both *supra*.

UMW submits that under applicable law, the evidence did not suffice to warrant and sustain the finding that UMW was responsible and liable for the acts of its member Clemons.

7.

Elsewhere herein (*ante*, p. 28), there has been detailed the facts concerning UMW's paying for groceries

and other merchandise for UMW members who had refused to return to Meadow Creek's mine for work. The district court found that money thus paid by UMW was paid to keep the employees from returning to work for Meadow Creek (R. 39-40, A. 8). The Sixth Circuit's affirmance thereof is inconsonant with federal legislation found in Section 20 of the Clayton Act (29 U.S.C. 52) and in Section 4(c) of the Norris- LaGuardia Act [29 U.S.C. 104(c)].

In 1914, Congress, in the Clayton Act's Section 20, established federal policy to permit "strike benefits or other moneys or things of value" to be paid and proclaimed therein that such payment or gift shall not "be considered or held to be violations of any law of the United States".[72] Reaffirmance of this right came with enactment of the Norris-LaGuardia Act, whose Section 4 is permissive of the payment to persons participating or interested in a labor dispute "strike, or unemployment benefits or insurance, or other moneys or things of value".[73] That Clayton's Section 20 and Norris-LaGuardia's Section 4 are expressive of federal policy is one of the teachings of *U. S.* v. *Hutcheson*, 312 U. S. 219 (1940); and while there has been both expansive and restrictive legislation enacted since 1932, there has been no minimization, by legislation or judicial interpretation, of the rights recognized by Clayton and affirmed by Norris-LaGuardia with reference to strike benefits. In a voluminous record, totally silent of any attempt to keep Meadow Creek's striking employees from returning to work, the district court's finding, affirmed by the Sixth Circuit, that UMW paid strike benefits to keep the em-

[72] Section 20 of the Clayton Act (29 U.S.C. 52) is found in Appendix IV herein, p. 35.

[73] Norris-LaGuardia Act, Section 4 (29 U.S.C. 104) is found in Appendix IV herein, p. 35-6.

ployees from returning to work for Meadow Creek is totally mythical, and without a scintilla of supporting evidence. Here again is another instance where the Sixth Circuit totally ignored and failed to answer in any wise the contentions submitted by UMW.

Since this incident is one of the "acts and conduct" employed by both courts to impress upon UMW a money judgment of $400,000.00, clearly in violation of federal policy, review by this Court is requisite to correct manifest error and to prevent a gross injustice.

8.

The strike here involved started on January 12, 1948. More than six years later, on February 12, 1954, this action was commenced.

UMW contended the action was barred by the three-year statute of limitations of Section 28-305, Tennessee Code Annotated. The caption thereof indicates relevance to "Property tort actions", and the statute is expressly applicable to "Actions for injuries to personal or real property, . . ." The Sixth Circuit, however, held that the present action was not for an injury to property but was controlled by a ten-year "catch-all" statute of limitations (A. 28-9).

This decision is erroneous and in conflict with the decisional law of Tennessee.

The Sixth Circuit's principal reliance was *City of Atlanta* v. *Chattanooga Foundry & Pipe Works*, 6 Cir., 127 F. 23 (1903), and on this Court's reluctant affirmance of that decision in 203 U. S. 390 (1906). These federal decisions narrowly construed the Tennessee three-year statute and held that it did not comprehend a cause of action under the Sherman Act for injuries in "business

or property". Judge Lurton, who wrote the opinion for the Sixth Circuit in the case, based his decision largely on the fact that the cause of action there involved was founded upon a statute and that such an action at common law is "in the nature of an action upon a specialty." Reasoning from this distinction, which Judge Lurton himself referred to as "quite refined", it was held that inasmuch as the cause of action was based upon a statute, it was based upon a specialty and was not merely an action upon the case. Hence the action under the Sherman Act did not fall within the three-year statute. Mr. Justice Holmes, speaking for the Supreme Court in the decision on the appeal which followed, though admitting to doubt, expressed agreement with the Court below on the basis of the "whole case".

The Sixth Circuit found the reasoning of the *Chattanooga Foundry* case applicable inasmuch as Section 303 of the Taft-Hartley Act, similarly to the Sherman Act, provides a cause of action in certain circumstances to a person "injured in his business or property" (A. 28). In so doing, the Court of Appeals persisted in its error of considering the present action a Taft-Hartley cause of action, rather than a common-law cause of action, for the purpose of determining some of the important questions involved on the appeal. It wholly ignored the fact that Judge Lurton apparently would not have held that the ten-year statute was applicable to an action which was not based on a specialty. It ignored, too, the fact that the cause of action upon which liability was founded was not an action upon a specialty.

The somewhat casuistic reasoning indulged in in the *Chattanooga Foundry* case is thus compounded in the present case for the Court of Appeals herein destroyed the repose which it is the purpose of any statute of limita-

tions to advance without benefit of the distinction available in the former case. No statute of limitations ought to be construed so as to singularize its application to a particular tort and permit institution of an action thereon for years after an action on an analogous tort is barred thereby. No sound reason is apparent why, for example, an action for the destruction of a chattel should be barred in three years and an action for the destruction of a business not for ten years. There is nothing to indicate such intention on the part of the Legislature and yet such is the logic of the Sixth Circuit's decision. The decision has the disturbing effect of calling for prompt action in a type of case in which there is a probability of certainty in evidence, while at the same time permitting the institution of an action for interference with business long after memories of the complicated occurrences involved therein have grown dim.

Manifestly the decision of the Court of Appeals in the instant case, in addition to overlooking the distinction between statute and non-statute liabilities made by Judge Lurton, failed to accord to the word "property" the common meaning placed thereon. That the right to engage in business is "property" is far too plain to require argument [*Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443 (1921)], and it ought to have been regarded as such by the Court of Appeals. It is in this respect that the decision of the Court of Appeals conflicts with decisional law of the State of Tennessee. In *Sanford-Day Iron Works* v. *Foundry Machine Co.*, 138 Tenn. 437, 198 S. W. 258 (1917), the Supreme Court of Tennessee ascribed a meaning to the word "property" broad enough to cover goodwill in business. It held that "property" includes "not merely the right of private use and enjoyment of tangibles but the intangible right of disposition and

sale. And the word in its broader and truer sense includes one's business, *as a thing entitled to protection from unlawful interference.*" (p. 440).

The carefully selected language just quoted reflects the considered opinion of the Tennessee Supreme Court on a similar question decided after the decision in the *Chattanooga Foundry* case. We submit that the clear inference of this language ought to have been followed by the Court of Appeals in the case at bar. *Hawks* v. *Hamill*, 288 U. S. 51 (1933).

The error of the Sixth Circuit, manifest from the foregoing discussion, should prompt the allowance of the writ sought herein.

CONCLUSION

For the reasons herein discussed, petitioner prays that this petition for writ of certiorari should be granted and that a writ of certiorari issue to review the decision and judgments of the United States Court of Appeals for the Sixth Circuit, entered in said Case No 13,470, on January 21, 1959, and February 23, 1959, as aforesaid.

Respectfully submitted,

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